

**FLINTSHIRE COUNTY COUNCIL**

**REPORT TO:** **PLANNING COMMITTEE**

**DATE:** **24<sup>th</sup> JULY 2019**

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

**SUBJECT:** **APPEAL BY LINGFIELD HOMES AND PROPERTY DEVELOPMENT LIMITED AGAINST THE FAILURE OF FLINTSHIRE COUNTY COUNCIL BEING ABLE TO GIVE NOTICE WITHIN THE PRESCRIBED PERIOD OF A DECISION FOR OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT, INCLUDING ACCESS, OPEN SPACE AND ALL ASSOCIATED WORKS AT WOODSIDE COTTAGES, BANK LANE, DRURY, BUCKLEY – ALLOWED.**

**1.00 APPLICATION NUMBER**

1.01 **058212**

**2.00 SITE**

2.01 **LAND ADJACENT WOODSIDE COTTAGES, BANK LANE, DRURY**

**3.00 APPLICATION VALID DATE**

3.01 **15<sup>th</sup> MARCH 2018**

**4.00 PURPOSE OF REPORT**

4.01 To inform members of the outcome of an appeal against the decision of the Local Planning Authority to refuse planning permission for the Outline application for residential development, including access, open space and all associated works at land at Woodside Cottages, Bank Lane, Drury. The appeal was Allowed and Costs were awarded against the Council.

**5.00 REPORT**

- 5.01 This application was for outline consent, with all matters reserved apart from Access, is for the residential development of up to 23 units, including open space.

The application site is 0.85 hectares, with 1 and 2 Woodside Cottages in the centre of the site and a parcel of agricultural land to the southern portion of the site. Due to existing site constraints the developable area of the site is approximately 0.581 Hectares. The application site is surrounded by residential development. To the southern boundary are semi-detached properties off Pen y Coed Road and Hillside Cottages, to the east a terrace of properties know as Hawarden View, to the north and north east residential development at Dinghouse Wood and Burntwood house and west the Burntwood public house and further residential properties off Burntwood Road. A public footpath runs adjacent to the northern and eastern boundary of the site. There are a number of trees and hedgerows around the perimeter of the site and a hedgerow along the driveway to Woodside Cottages in the centre of the site. The site is located within the settlement of Drury & Burntwood in the Flintshire Unitary Development Plan.

An appeal was lodged against the failure to determine the application within the prescribed time.

Nevertheless the application was taken to the Planning committee on the 5<sup>th</sup> September 2018 and the decision was to refuse the application for the following reasons:

1. The Local Planning Authority considers that the proposal, by virtue of its inadequate access, would have an adverse impact upon highways safety and amenity contrary to policies STR2, GEN1 and AC13 of the Flintshire Unitary Development Plan.
2. The Local Planning Authority considers that the proposed development provides a level of housing density upon the site which does not represent the best and most efficient use of development land and are concerned that the developable area of the site has been artificially reduced. As such it is consider to be contrary to the requirements of Policies STR1 and HSG8 of the Flintshire Unitary Development Plan, as well as paragraph 9.1.2 of Planning Policy Wales 9.

This decision formed the basis of the Councils case against the development.

The Planning Inspector appointed to this case, Sian Worden, considered that the main issues in the determination of this appeal to be:

- the effect of the proposed development on highway safety; and
- whether the most efficient use of the appeal site would be made with regard to the proposed density of development.

The Planning Inspector found that there is no evidence that the proposed development would fail to create a safe, healthy and secure environment or that it would not make the best use of existing roads. Furthermore, it was found, on the basis of the evidence and case submitted, that no mitigation measures are required and thus traffic management and calming are not necessary. In so far as it is necessary at this outline stage, it was considered that the scheme has taken account of personal and community safety. It would not have a significant adverse impact on the safety and amenity of nearby residents, other land users or the community in general, and it would not have an unacceptable effect on the highway network as a result of traffic generation.

The Planning Inspector noted that the approach roads to the site are of an adequate standard to accommodate the traffic likely to be generated by the development without compromising public safety, health and amenity, and that safe vehicular access can be provided by the developer both to and from the main highway network. In all these respects the proposed development would comply with Policies STR1, STR2, GEN1 and AC13 of the Flintshire Unitary Development Plan which was adopted in 2011.

The appeal site has several constraints including drainage easements; protection zones around the trees and hedgerows to be retained; a buffer around the existing dwelling, Burntwood House; public open space (POS) and nature reserve; and a suspected mine shaft. The Planning Inspector considered that these were all necessary and of an appropriate extent. It was noted that the indicative layout also shows that the proposed dwellings would not be widely spaced or have particularly large gardens, and there would be a reasonable mix of house sizes. In locating the access road in the drainage easement and the POS in the area sterilised by the existing house buffer, the hedgerows and trees, and the mine shaft, the suggested layout makes good use of the available space.

The proposed development would not have a significant and uncertain environmental, social, economic or cultural impact and it is not necessary to adopt Policy STR1's precautionary approach. In making the most efficient use of available land the proposed development is considered to comply with UDP Policy HSG8.

The Planning Inspector considered that as the UDP is well past its end date its housing strategy and numbers, which are implemented through policies in the housing chapter including Policy HSG3, have very limited currency. This is a significant change in circumstances from when an earlier outline application for residential development,

raised as a material consideration, was refused and then dismissed on appeal in 2011. The Council points out that paragraph 6.2 of Technical Advice Note 1 (TAN 1) *Joint Housing Land Availability Studies*, which required considerable weight to be given to the need to increase supply where councils had no five year supply of housing land, has recently been dis-applied. Nonetheless, it was the Inspectors view that the provision of over twenty dwellings in an area without a five year supply would be a considerable benefit, given that there are no compelling policy or other considerations weighing against the scheme.

The Planning Inspector was provided with a finalised copy of a unilateral undertaking through which the owner and developer covenant to pay contributions towards education and open space provision and to provide an on-site nature reserve. The education contribution, which would be spent entirely on primary school provision, is necessary because there is currently no capacity at the local primary school. The open space contribution would be used to upgrade an existing facility whilst the on-site area is necessary in the interests of great crested newts. The unilateral undertaking would be consistent with the tests set out in Regulation 122, and the limitation imposed by Regulation 123, of The Community Infrastructure Levy Regulations 2010 (CIL). It therefore carries substantial weight as a reason to grant planning permission.

The Council had requested that a payment of £2,500 per dwelling be made towards mitigating the indirect impacts on the SAC. As explained above, mitigation could be provided either by an on-site area of open space or by a financial contribution towards off-site enhancement. The proposed development would provide the first and thus this payment is not necessary and does not meet the CIL tests.

In considering the application for Costs the Planning Inspector noted that the application was refused against officers' recommendation on the grounds of highway safety and amenity, and the inefficient use of land, and that whilst a local planning authority is not bound to adopt the advice given by its officers or received from statutory consultees. It is, however, expected to show that it had reasonable planning grounds for taking a decision contrary to such advice and that it is able to produce relevant evidence to support their decision. It was not considered that the Local Planning Authority had done so on this occasion.

## **6.00 CONCLUSION**

- 6.01 The Planning Inspector found that the proposed development would not have a detrimental effect on highway safety and would make efficient use of the land within the appeal site. They considered that the provision of market housing would also support the site's residential development. Whilst aware that there has been

considerable objection to the scheme, all the matters raised were taken into consideration but were not found sufficient in the planning balance to justify refusing a proposal which would generally be in compliance with national and local planning policy.

With regard to the Costs application, The Planning Inspector concluded that the Council behaved unreasonably in preventing development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations as identified in the Development Management Manual. In doing so the appellant was caused the unnecessary expense of pursuing the appeal.

The appeal was allowed and planning permission granted for residential development, including access, open space and all associated works at land adj. Woodside Cottages, Bank Lane, Drury CH7 3EQ in accordance with the terms of the application, Ref 058212, dated 9 March 2018, and the plans submitted with it, subject to the conditions listed in the schedule at the end of this document. The Council was also ordered to pay the Appellant the costs of the appeal proceedings.

#### **LIST OF BACKGROUND DOCUMENTS**

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

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