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## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 02/03/20

gan Mr A Thickett BA(Hons) BTP Dip RSA  
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 27.04.2020

## Appeal Decision

Site visit made on 02/03/20

by Mr A Thickett BA(Hons) BTP Dip RSA  
MRTPI

an Inspector appointed by the Welsh Ministers

Date: 27.04.2020

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### Appeal Ref: APP/A6835/A/3243303

### Land south of Rhos Road, Penyffordd, Flintshire, CH4 OJR

- 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 R Heaton against the decision of Flintshire County Council.
- The application Ref 060076, dated 5 June 2019, was refused by notice dated 4 September 2019.
- The development proposed is over-55 retirement housing with detailed site access and all other matters reserved for subsequent approval.

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### Decision

1. The appeal is allowed and outline planning permission granted subject to the conditions set out in the schedule at the end of this decision.

### Procedural matter

2. On 26 March 2020 the Minister for Housing and Local Government announced that with immediate effect, the five-year housing land supply policy in Planning Policy Wales had been replaced by a policy statement making it explicit that the housing trajectory, as set out in adopted Local Development Plans, (LDP) would be the basis for monitoring the delivery of development plan housing requirements as part of LDP Annual Monitoring Reports. The Minister also revoked Technical Advice Note (TAN) 1: Joint Housing Land Availability Studies.
3. The Council and appellant were invited to make submissions regarding the implications for their cases in this appeal. The appellant did so, the Council did not.

### Main Issue

4. The main issue is whether the proposed development is premature and would prejudice the strategy set out in the emerging local development plan.

### Reasons

5. The site lies outside but immediately adjacent to the settlement boundary of Penyffordd as defined in the Flintshire Unitary Development Plan 2001 – 2015, adopted 2011 (UDP). Outside settlement boundaries, UDP Policy GEN3 restricts new housing to, amongst other things, that necessary to support rural enterprises, infill or rural exceptions schemes. None of the exceptions in Policy GEN3 apply here and the proposed development, therefore, conflicts with the UDP in that regard.

6. The housing requirement, strategy and settlement boundaries set out in the UDP are based on evidence of housing need which is long out of date. Indeed, the UDP is 5 years past its end date. The Council's emerging Local Development Plan (LDP) has been placed on deposit and is expected to be submitted for examination later this year.
7. The Council argues that; *'housing completions during the first three years of the plan period are slightly ahead of the LDP's annualised planned provision, and the plan is therefore 'on track' as far as housing delivery is concerned'*. The weight to be attached to an emerging LDP does not necessarily increase as it progresses to adoption. The housing requirement, housing trajectory and LDP strategy are yet to be tested at examination. Consequently, I cannot be certain that they are sound and I afford the Council's assertion little weight.
8. The changes to PPW and revocation of TAN1 have not reduced the importance of delivering new housing, just the way delivery is planned, measured and monitored. PPW, as revised, states that: *'Under-delivery against the trajectory may require a specific early review of the development plan'*. In my view that is a clear indication that the government is committed to ensuring that the planning system delivers the housing Wales needs and that under delivery is a material consideration. I consider the matters to be considered in determining the weight to be attributed to under delivery are: the extent of the shortfall, the length of time there has been a shortfall and how soon the Council will be able to demonstrate through an adopted LDP, how the housing needs of the area are to be met.
9. The Development Plans Manual (DPM) sets out how delivery should be measured for development plans adopted prior to DPM Edition 3 in March 2020. For those plans published prior to the publication of the DPM, completions will be measured against the Average Annual Requirement set out in the plan. Flintshire does not have a LDP. Its UDP was adopted in 2011 and as stated above its housing requirement based on evidence of that is long out of date. Notwithstanding revocation of TAN 1 and changes to PPW, the only available objective and tested evidence relating to the delivery of housing in Flintshire is the 2014 Joint Housing Land Availability Study. That recorded a housing land supply of 3.7 years and for a number of years since the figure has been zero.
10. The extent of the shortfall is, therefore, significant both in terms of the amount and length of time Flintshire has suffered from an inadequate housing land supply. The Council will not be able to demonstrate that it can provide a supply of land to meet Flintshire's housing requirement as required by PPW until the emerging LDP is adopted. The Council does not dispute the appellant's assertion that this would be July 2021 at the earliest. In my experience LDP submission and adoption dates more often than not slip beyond those set out in the Delivery Agreement.
11. Nevertheless, with a fair wind Flintshire could have an adopted LDP in place in 2021. That is not that long from now in LDP production terms. I consider that the likelihood of a plan led solution to the shortfall in housing land supply in the next 12 to 18 months means that the weight to be given to under delivery is significant but does not of itself justify the grant of planning permission in this case.
12. I now turn to prematurity. It is a long established principle that withholding planning permission on grounds of prematurity will not usually be justified

- except where a proposal goes to the heart of a plan and is individually or cumulatively so significant that to grant planning permission would be to predetermine decisions about the scale, location or phasing of new development which ought to be properly to be determined through the LDP process.
13. The DPM states that; *'Whether planning permission should be refused on grounds of prematurity requires careful judgement and the LPA will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the LDP process'*. The illustrative plan submitted with the appeal application shows 36 units and the Council accepts that, on its own, the proposed development is too small to affect decisions about the scale or location of development in the emerging LDP.
  14. The Council's objection to this development is based on the alleged cumulative impact of the appeal proposal and permission granted on appeal for 261 units on three other sites in Penyffordd. Penyffordd and Penymynydd together are defined as a tier 3 settlement in the emerging LDP. The emerging LDP apportions 14% of housing growth to tier 3 settlements. The Council uses that apportionment, the overall housing requirement in the emerging LDP and commitments to arrive at a residual need in tier 3 settlements of 122 units.
  15. However, as stated above the LDP's housing requirement and strategy have yet to be tested at examination. I cannot be certain that the overall requirement figure or strategy are sound or the apportionment for any of the tiers is based on robust evidence. Even if it is, I am not persuaded that to permit 36 units out of the alleged residual 122 would go to the heart of the plan or prejudice the LDP process.
  16. Despite citing concerns regarding the ability of Penyffordd to accommodate the developments allowed on appeal and arguing that *'it cannot be a sustainable proposition to keep on approving incremental speculative applications, such as this proposal, without regard to the cumulative effect on this settlement'*, the Council accepts that Penyffordd is a *'sustainable settlement capable of accommodating a reasonable level of growth'*. It also accepts that the site *'is not necessarily in an unsustainable location, or that the site's development would not be a sustainable proposition'*.
  17. I have considered the concerns of local residents with regard to the ability of local services and infrastructure to accommodate the development recently permitted in Penyffordd. The Council is satisfied that the highway network and drainage systems are capable of accommodating the development. The impact of the proposed development on other services is not cited as a reason for refusal and I am entitled to assume, therefore, that the Council does not consider that residents' concerns warrant the withholding of planning permission. I have seen no empirical evidence to lead me to a different conclusion.
  18. The Council's third reason for refusal includes the following statement; *'A further reserved matters application would be required to examine a range of fundamental issues which may demonstrate the site is undeliverable'*. Fundamental issues should not be left to reserved matters. The approval of reserved matters follows the grant of planning permission and should local planning authorities consider that they need additional information before determining an application for outline planning permission they have the power

to ask for it. I have seen nothing to indicate that the Council did so or considered it was necessary to do so in this case.

19. The Council does not dispute the appellant's assertion that Penyffordd's Place Plan identifies a need to provide housing to enable the elderly to move to and remain in the village. Nor do the Council dispute that the appellant has already carried out a significant amount of preparatory work, that the site is free from constraints, a developer is lined up and a reserved matters application could be submitted within 6 to 9 months of outline planning permission being granted. In light of this I do not share the Council's pessimism and am persuaded by the appellant's evidence that work could start on site by or around the projected adoption date for the LDP. I will amend the standard time limit conditions to reflect this and the need to secure delivery.

#### Unilateral undertaking and conditions

20. The appellant submits a unilateral undertaking which restricts occupancy to over 55s, commits to making contributions to active travel and improving open space elsewhere in Penyffordd. In light of the identified need, I am satisfied that the age restriction is necessary. I also consider that, in the interests of sustainable development, the contribution towards improving pedestrian links to Penyffordd Railway Station is necessary. However, given the age of prospective residents, I am not persuaded that a financial contribution to improving off site teenage play provision is necessary and I afford that part of the unilateral undertaking little weight.
21. The undertaking also has a clause relating to the provision of affordable housing but through an application for reserved matters. It is only possible to impose conditions on a reserved matters approval which relates to the reserved matter. The provision of affordable housing is matter that goes to the principle of whether planning permission should be granted and so must be secured when planning permission is granted, not at a later stage. I am satisfied that an affordable housing contribution is necessary and shall impose a condition.
22. I have considered the Council's suggested conditions in light of the advice in Circular 16/14. I have seen nothing to suggest that the siting, design and layout of the access as shown on the submitted drawing is unacceptable and see no need, therefore, to require further details. Nor have I been given any reason why it is necessary to duplicate requirements relating to the construction of the access or highway drainage. Details of parking and internal layout will be subject to approval of reserved matters.
23. I have seen no technical evidence or submission from a suitably qualified person to support the proposition that the noise generated by traffic on the A550 is such that mitigation is necessary to ensure that prospective occupiers enjoy satisfactory living conditions. Nor, given the contribution to active travel contained in the unilateral undertaking and the location of the site, am I persuaded that a condition requiring a travel and transport plan is necessary.

#### Conclusions

24. The appeal site lies outside the settlement boundary of Penyffordd and the development conflicts with Policy GEN3 of the UDP. But, the policies for housing provision and restraint in the UDP are based on evidence long out of date and the UDP time expired 5 years ago. The latest, tested evidence

relating to housing delivery demonstrated an under delivery of housing in Flintshire.

25. I consider the extent of the shortfall both in amount and the number of years it has existed means that increasing housing provision is a significant factor which weighs in favour of the proposed development. The prospect of a plan led solution to the shortfall is more than a year away and, at this time, there is no certainty that the housing requirement and strategy set out in the emerging LDP is sound. The Council accepts that, on its own, the proposed development would not prejudice the LDP process. Nor do I consider that when added to the units permitted at appeal at Penyffordd, around 300 dwellings out of a requirement in the emerging LDP of almost 8,000, can be said to go to the heart of the emerging plan.
26. The Council accepts that Penyffordd is a sustainable location for new growth and does not argue that Penyffordd is not capable of accommodating the proposed and permitted developments. The Place Plan identifies a need for accommodation for the elderly, the scheme would provide affordable housing and I have no doubt that the development could be implemented around the time the LDP is programmed for adoption if not before.
27. I consider that taken together these matters outweigh the conflict with UDP Policy GEN3 and for the reasons given above and having regard to all matters raised, I conclude that the appeal should be allowed.
28. 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 the Welsh Ministers' well-being objective of building healthier communities and better environments.

*Anthony Thickett*

Inspector

## Schedule

### APP/A6835/A/3243303

The appeal is allowed and outline planning permission is granted for over-55 retirement housing with detailed site access at land south of Rhos Road, Penyffordd, Flintshire, CH4 0HY in accordance with the terms of the application, Ref 060076, dated 5 June 2019, subject to the following conditions:

- 1) The development shall begin either before the expiration of two years from the date of this permission or before the expiration of one year from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

- 2) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

Reason: To ensure that the development hereby permitted does not have a detrimental impact on the character and appearance of the area in accordance with UDP Policy GEN1(a).

- 3) Any application for approval of the reserved matters shall be made to the local planning authority not later than one year from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

- 4) The development shall be carried out in accordance with the following approved plan: Proposed Site Access and Road Layout Dwg No. 5138/02.

Reason: To ensure that the development is carried out in accordance with the approved plans and drawings submitted with the application.

- 5) The access shown on Dwg No. 5138/02 shall be completed before the first dwelling is occupied. The 2.4m by 43m visibility splays shown on Dwg No. 5138/02 shall be maintained free of any obstruction exceeding 0.6m in height for as long as the development hereby permitted remains in existence.

Reason: In the interests of highway safety and to accord with Policy UDP Policy GEN1(e).

- 6) The footway along Rhos Road shown on Dwg No. 5138/02 shall be completed in accordance with details to be submitted to and approved in writing by the local planning authority before the first dwelling is occupied.

Reason: In the interests of highway safety and to accord with Policy UDP Policy GEN1(e).

- 7) No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:

- i) the parking of vehicles of site operatives and visitors;
- ii) loading and unloading of plant and materials;
- iii) storage of plant and materials used in constructing the development;
- iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- v) wheel washing facilities;
- vi) measures to control the emission of dust and dirt during demolition and construction; and
- vii) a scheme for recycling/disposing of waste resulting from demolition and construction works.

Reason: In the interests of highway safety and to safeguard the living conditions of nearby residents in accordance with UDP Policy GEN1(d).

- 8) No development shall commence until details of a scheme for the disposal of foul water has been submitted to and agreed in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to the occupation of the first dwelling and retained in perpetuity.

Reason: To ensure that the foul sewage system can satisfactorily accommodate the proposed development in accordance with UDP Policy GEN1(i)

- 9) No development shall take place, nor any site clearance, until there has been submitted to and approved in writing by the local planning authority details of a scheme for the protection of the hedges on the site boundaries (excluding Rhos Road) throughout the construction of the development hereby permitted.

Reason: To ensure that the development hereby permitted does not have a detrimental impact on the character and appearance of the area in accordance with UDP Policy GEN1(a).

- 10) No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex B of TAN 2 or any future guidance that replaces it. The scheme shall include:
- i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 30% of housing units;
  - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
  - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no affordable housing provider is involved);
  - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and

- v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

Reason: In order that the development contributes to the need for affordable housing and complies with UDP Policy HSG10