



Appeal Decision

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 31/08/2023

Appeal reference: CAS-02239-T2T0X0

Site address: Former Gateway to Wales Hotel, Welsh Road, Garden City, Queensferry CH5 2HX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Valedown Developments Ltd against the decision of Flintshire County Council.
 - The application Ref 062863, dated 16 April 2021, was refused by notice dated 21 April 2022.
 - The development proposed is 4 No. Class E(a) and E(b) food and retail units and associated car parking and signage.
 - A site visit was made on 10 May 2023.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs has been made by Valedown Developments Ltd against Flintshire County Council. This application is the subject of a separate decision.

Procedural Matters

3. The description of the development refers to the change in the England Use Classes Order of The Town and Country Planning (Use Classes) Order 1987 (as amended), but the Welsh Use Classes Order has not changed in relation to shops and food and drink retail. The development comprises one retail store (371.71 m²), two food retail stores contained in one building (130 m² each) and a drive through hot drink retail store (168 m²). These are shown on the submitted plans and are also described in the application at section 17. The site address is Garden City although this settlement adjoins Queensferry. These settlements are divided by the River Dee.
4. The Council refused planning permission on one reason in relation to highway safety. Since this decision The Flintshire Local Development Plan 2015-2030 (LDP) was adopted on 24 January 2023, replacing the Unitary Development Plan (UDP). The appeal is determined in accordance with the adopted LDP having regard to Section 38(6) of the

Planning and Compulsory Purchase Act 2004. Future Wales, The National Plan 2040 (FW) forms part of the development plan for the purposes of Section 38(6).

5. The parties were requested to provide an updated planning policy statement to identify the relevant policies of the LDP and to those policies of the UDP which were replaced by their equivalent LDP policy and to assess the difference and the implications of these policies with relation to the proposed development. The parties were given an opportunity to comment on each other's submissions. These submissions have been considered in this appeal. The Council has provided a list of relevant LDP Policies in its statement and in response to the request made above.
6. The previous refusal planning reference (062202) referred to the issue of flooding, but this has now been omitted in this appeal. However, Technical Advice Note 15 Development and Flood Risk (TAN 15) and the justification tests are matters that require consideration in this appeal and I have a duty to have regard to it together with the development plan and this therefore becomes the second main issue in the determination of this appeal.

Main Issues

7. The main issues are:

- the effect of the proposal on highway safety, and
- whether the proposed development would be at significant risk of flooding and would satisfy the tests for less vulnerable development in flood zone C1 (areas which are developed and served by significant infrastructure/flood defences) as set out in Technical Advice Note 15 Development and Flood Risk (TAN 15).

Reasons

Highway safety

8. The appeal site is a corner site off the A494/B5441 roundabout known as Drome Corner. It lies adjacent to the A494 slip road and the main access is served off Welsh Road the B5441. Welsh Road is a wide carriageway with a pavement either side with a traffic speed restriction of 40 mph. A short distance towards Garden City the traffic speed restriction reduces to 30 mph. The pavement on the northern side of the carriageway is also a cycle route. The road adjacent to the site access is restricted for parking being so near to the roundabout. The site is in a sustainable location within the settlement of Garden City and served by public transport with bus stops situated either side of Welsh Road near to the site.
9. The Council has refused planning permission on the basis that the proposal fails to make adequate provision for heavy goods vehicles (HGV) parking, loading, and unloading to facilitate deliveries and servicing. It is asserted that the provision for HGV deliveries would conflict with parking spaces and would impact on the safety of the access and highway network.
10. The appellant has submitted a Transport Statement (TS) March 2021 assessing the existing site conditions, the development proposal, its accessibility, the trip generation, car parking demand, personal injury collisions, future traffic growth and junction assessments.
11. The total trip rate generation for the proposed combined uses of the site has been calculated as 78 two-way trips during the AM peak hour and 139 two-way trips during the PM peak. The residual new trips in the TS are marginally less when considering the previous hotel use trip generation on the site. The TS takes into consideration the baseline traffic flows surveyed in 2011. The 2021 baseline year flows included the surveyed data of 2011 and committed development on the outline permission and

reserved matters at the RAF Sealand site and trips data has been assessed in relation to distribution and journey to work census data. Future year traffic growth has been considered in the AM and PM peaks to 2026. The TS has also provided junction flow rates relative to junction capacity. The statement has calculated that the proposed access junction onto Welsh Road operates well within capacity using 2023 and 2026 future year scenarios. The TS also assesses the junction arms of the roundabout using the additional trips calculated on peak times. The TS calculated that that the south arm of Welsh Road with 43 additional trips is equivalent to less than 1 vehicle a minute.

12. The proposal would include 63 car parking spaces including 6 disabled spaces, and 12 secure cycle parking spaces. The TS using the Council's parking standard Supplementary Planning Guidance No. 11 Parking Standards 2017, calculates a maximum parking requirement of 88 spaces if the drive-through coffee shop is regarded as a cafe. However, the standard is reduced to 68 spaces using the use-class classification of fast-food drive through premises. The TS has assessed the parking demand in relation to peak car parking space accumulation which does not exceed 28 vehicles over the day. This is below the proposed provision of 63 parking spaces provided and is considered a sufficient margin to accommodate operational and peak parking demand.
13. Swept path analysis plans have been submitted to demonstrate that a 16.5 m articulated vehicle and a 10 m rigid vehicle can safely enter and exit the site and manoeuvre within it. There are no objections from Welsh Government Transport and the Council's Highway Authority to the proposed development in relation to the TS, accident records and junction visibility. I have no reason to disagree with these findings. Deliveries would take place outside the opening hours of the proposed development and can be secured by planning condition. In my view, there is no likely conflict arising from delivery vehicles and access to car parking on the site as they would operate separately from one and another.
14. The TS has comprehensively assessed the effect of the proposed development on highway safety. There is no technical evidence presented from the Council and interested parties to indicate that the proposed development would cause harm to highway safety. I consider that the proposal does not conflict with LDP Policies PC5 (criteria b and c), PC2 (criterion e) and STR5 (criterion iv).
15. I conclude that the proposal would not harm highway safety.

Flood risk

16. The appeal site is a vacant site with all buildings removed from it apart from the small substation adjacent to the existing access. The site was previously occupied by the Gateway to Wales Hotel, which was demolished, and the site cleared. The former hotel had suffered from fire damage. The site is in the settlement of Garden City a local centre in the LDP. It is recognised as a sustainable site and previously developed land, but has no allocation for it in the LDP. A short distance to the north-east there is a strategic site allocated in the LDP the Northern Gateway which is promoted as a mixed-use strategic site for housing, employment, and community facilities.
17. FW identifies a large swathe of the north-east coast around Deeside and Wrexham as a National Growth Area (NGA). The LDP was adopted after FW and is considered in conformity with the FW development plan. The LDP has been through examination and has identified the strategic sites promoted for major growth development, regeneration of the area and flood defence infrastructure. The appeal site, whilst adjacent to the Northern Gateway Strategic Site in the LDP, is nevertheless, outside this area, and the NGA of FW for this region has been clearly defined in the LDP.

18. Natural Resources Wales (NRW) indicates that the appeal site lies within Zone C1 of the Development Advice Map (DAM). The site is within both the tidal and fluvial zone extents of the tidal River Dee and the Manor Drain, which is a culverted main river flowing beneath the site. NRW refers the decision maker to the justification tests set out in Section 6 of TAN 15. The justification tests criteria (i) to (iii) are planning policy-based criteria and test (iv) considers the potential consequences of a flooding event. The appellant has updated the Flood Consequence Assessment (FCA) and NRW has commented on it.
19. Commercial and retail development is considered as less vulnerable development as set out in TAN 15 Figure 2. The FCA indicates that the site is within Flood Zone 3 of the Flood Map for Planning with a 0.5% chance of flooding from the sea in any given year including the effects of climate change. The FCA has referred to the NRW's Tidal Dee Flood Mapping Study (2020). The appeal is considered on this presented evidence.
20. The appeal site is situated in flood zone C1 as defined in TAN 15 Figure 1 – Areas of the floodplain which are developed and served by significant infrastructure including flood defences.
21. TAN 15 indicates that new development should be directed away from zone C and towards suitable land in zone A, otherwise to zone B, where river or coastal flooding will be less of an issue. In zone C the tests outlined in sections 6 and 7 of TAN 15 will be applied, recognising, however, that highly vulnerable development and Emergency Services in zone C2 should not be permitted. All other new development should only be permitted within zones C1 and C2 if determined by the planning authority to be justified in that location. The section 6 tests are that development will only be justified if it can be demonstrated that:
 - i. Its location in zone C is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement; **or**,
 - ii. Its location in zone C is necessary to contribute to key employment objectives supported by the local authority, and other key partners, to sustain an existing settlement or region;

and,

 - iii. It concurs with the aims of Planning Policy Wales (PPW) and meets the definition of previously developed land (PPW fig 2.1); and,
 - iv. The potential consequences of a flooding event for the particular type of development have been considered, and, in terms of the criteria contained in sections 5 and 7 and appendix 1 of TAN 15, found to be acceptable (paragraph 6.2 of TAN 15).
22. The appellant has chosen not to consider criterion (i) indicating that it complies with (ii). However, in criterion (i), TAN 15 defines regeneration initiatives as comprehensive, multi-approach and forming part of an integrated suite of initiatives which have been subject to public consultation. In my view, the proposal is not of a scale to fall within this definition.
23. A local authority strategy is clarified as the development plan for the area (deposit version as minimum). The proposal site is outside the Northern Gateway Strategic Site in the LDP which focusses the NGA to a particular site area for the purposes of FW. This is a 'windfall' site where there is no allocation in the LDP and has come about through re-development following the removal of the fire damaged hotel which previously occupied the site.

24. Whilst the local planning authority (LPA) through its strategies would support employment generation facilitated by the development in broad terms it is also evident that the appeal site is not identified in the LDP for such purposes and that the major strategic growth area planned in the LDP is to the north of this site. Although there are broad policies in support of the proposal there are also restrictive policies on flooding that are not. Taken as a whole, the spatial and strategic response of the LPA is to focus development, employment and housing and major flood defence infrastructure on this strategic site and not on the appeal site. There is no compelling evidence presented to indicate that the proposed appeal site is identified as a local authority strategy required to sustain an existing settlement. Criterion (i) is therefore not met.
25. In relation to criterion (ii) the FCA indicates that the site has been designated as suitable in size and location and that major employment benefits would ensue from the development and would assist in regenerating the area and provide a stronger service function and mix of employment uses.
26. The LDP recognises that the overall aim and objectives of the area is to create employment and appropriate housing. This has been determined in relation to the strategic growth site which does not include the appeal site. The appeal site has not been specifically earmarked or identified in the LDP, or insofar as, the evidence provided, in other employment strategy initiative.
27. The site has therefore not been identified as necessary to contribute to key employment objectives supported by the local authority, and other key partners, or that the site has been identified to sustain an existing settlement or region. Criterion (ii) has therefore not been met.
28. The site is in a sustainable location and meets the definition of previously developed land. TAN 15 notes, however, that relevant sustainable development considerations from a flooding perspective include guiding development to locations at little or no risk from flooding. The proposed development would not be consistent with the aims of Planning Policy Wales (PPW) (Edition 11) (paragraphs 6.6.22 - 6.6.26) and would not fully meet the third justification test.
29. In my view, as the proposed development is classed as less vulnerable development and fails the justification tests of Section 6 of TAN 15 for a development located in C1 flood zone, consideration of the scheme should stop there. Nevertheless, the Council and NRW have gone on to consider the FCA and the potential consequences of flooding. NRW and the Council has also relied on a fallback scenario.
30. The FCA notes that the site is subject to flood depths of up to 0.34 m during the design flood event 0.5% annual exceedance probability (AEP) in the 2095 flood event due to a breach of defences at Garden City. The FCA notes that breach modelling shows that the site would be inundated with floodwater during the 0.1% AEP. The probability of flooding to a depth of 600 mm or more is less than the 0.1% AEP in the 2117 flood event. Maximum water velocities of 0.16m/s is predicted across the site for the 2095 flood event. The FCA notes that paragraphs A1.14 and A1.15 of TAN 15 are therefore met, and that this guidance can be regarded as indicative only, and not prescriptive.
31. NRW notes that finished floor levels would not be raised, but mitigation through flood resilience and resistance are proposed. However, NRW notes that these measures are unlikely to be sufficient and state that the requirements of paragraphs A1.14 and A1.15 of TAN 15 are not met. TAN 15 notes that there is a frequency threshold of flooding below which flooding of development should not be allowed. TAN 15 also explains that even with adequate mitigation measures in place it may still not be sensible to allow

development to take place. Where there are technical objections from the statutory consultee on the matter, notwithstanding its stance on the fallback issue, this concern is a material consideration of significant weight in accepting that the FCA has met criterion (iv). In my view, criterion (iv) has not been met.

Fallback

32. NRW and the Council accept that the existing use on site from a planning use as a hotel is classified as highly vulnerable and that the proposed development is defined as less vulnerable development from a flooding risk perspective. There are no details of the finished floor levels of the demolished hotel, but it is accepted that the proposed building's footprint is also reduced from the previous hotel development, and that floor levels would be similar or above the former building.
33. However, for this point to be accepted there must be a realistic prospect of the fallback that is the hotel development of taking place which is considered more certain than a theoretical possibility of occurring. The hotel building has been demolished and the site is clear of all material associated with it. It is established that a use cannot survive the destruction of buildings. There is no evidence presented that there is agreement or permission in place to re-build the hotel on this site.
34. In assessing whether the likelihood of this alternative hotel development could take place, there must be no impediment for it be instigated and no further approval required to be agreed that might prevent this hotel development. Only where these matters are met, which they are not in this case, can the alternative development of the hotel be assessed against the appeal proposal to establish whether the alternative would cause more harm than the appeal development.
35. I consider that the prospect of the hotel development taking place is not a realistic one. The hotel development is not a fallback position in which to assess the appeal development against from a flooding point of view.

Conclusion on flood risk

36. The fallback issue is of very limited weight and does not outweigh the flooding concern, the application of the justification tests in TAN 15, and the precautionary approach to positive avoidance of development in areas of flooding from the sea or from rivers as set out in PPW.
37. The proposal does not therefore demonstrate compliance with TAN 15 and the development plan, FW Policy 8 and LDP Policy EN14: Flood Risk. I conclude that the proposed development would be at significant risk of flooding and would not satisfy the tests for less vulnerable development in flood zone C1 as set out in TAN 15.

Other matters

38. I note numerous other concerns raised by interested parties and in relation to the impact of the development on the vitality and viability of the local centre and the Northern Gateway Strategic Site including the Airfields site. There is concern that the proposed development would undermine the strategic allocation in the LDP affecting delivery of this commitment and is regarded as an unsustainable site with customers having to cross Welsh Road. I note these concerns and that retail impact has not been a determining issue in the Council refusing planning permission. I cannot come to a conclusive determination on the matter, but the flooding concern is a determining issue in this appeal. This issue alone outweighs all other concerns in relation to this appeal.

Planning Balance and Conclusions

39. I am required to determine this proposal in accordance with the development plan unless material considerations indicate otherwise. The starting point is therefore the development plan (FW and LDP).
40. I have found that the development conflicts with the development plan policies relating to flood risk and the application of the justification tests in TAN 15, and the need to take a precautionary approach to positive avoidance of development in areas of flooding from the sea or from rivers as set out in PPW.
41. I have found that the development complies with the development plan in relation to highway safety. However, this matter is neutral in the final balance as this is expected of all developments.
42. Therefore, the appeal scheme should be regarded as conflicting with the development plan when taken as a whole, despite the matters where I have identified policy compliance. There are no other material considerations before me that may be regarded of sufficient weight to indicate a decision other than in accordance with the development plan.
43. 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.
44. The planning balance is against allowing this appeal.

Iwan Lloyd

INSPECTOR