



Appeal Decision

by N Jones BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 06/08/2024

Appeal reference: CAS-02483-N2F1B6

Site address: Land off Waunscil Avenue, Brackla, Bridgend, CF31 1TG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mulberry Homes Ltd. against Bridgend County Borough Council.
 - The application Ref P/20/1030/FUL is dated 23 December 2020.
 - The development proposed is the erection of 70 dwellings, community route and associated play area and public open space.
 - A site visit was made on 8 February 2024.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the appeal was made, the Council has adopted the Replacement Bridgend Local Development Plan 2018-33 (RLDP). The appeal must be determined in accordance with the current development plan unless material considerations indicate otherwise. Edition 12 of Planning Policy Wales (PPW) was also published during consideration of the appeal. The parties were provided with an opportunity to address the revised policy context.
3. The appeal relates to the failure of the Council to determine a planning application for the development set out in the banner heading above. The Council did not determine the planning application within the dual jurisdiction period following the submission of the appeal but has set out its concerns regarding the proposed development.
4. An Environmental Statement (ES) and Addendum Report (September 2022) (ESAR) accompanied the planning application. I have taken into account the environmental information in arriving at my decision.

Main Issues

5. I consider the main issues to be:
 - i) whether the proposed development aligns with the placemaking aim of national planning policy, having regard to adopted local policy; and

- ii) the effect of the proposal on highway safety.

Reasons

Placemaking

6. The appeal proposal would entail the erection of 70 dwellings and associated development, including an active travel route and play space, on a narrow vacant site which previously accommodated a railway, located within a densely developed, principally residential area of the Primary Key settlement of Bridgend identified under Policy SF1. The framework for the development of the appeal site is provided by Policies SP3, SP5, SP6, SP10, PLA10, PLA12, ENT10, DNP8, COM3, COM6, and COM10 which seek to promote good design and sustainable place making, active travel, a sustainable supply of housing land, infrastructure, low carbon heating, green infrastructure, on-site affordable housing, manage residential density and deliver outdoor recreation facilities. In addition, the appeal site is designated by Policy COM11(7) as an area of accessible, natural and semi natural greenspace. The policy framework is supported by the requirements of Planning Policy Wales, Edition 12 and Future Wales – The National Plan 2040 in respect of sustainable development, placemaking, active travel and green infrastructure.
7. The Council raises no concerns regarding the safeguarding of disused railway infrastructure safeguarded under Policy PLA10 which does not permit development which prevents the potential re-opening of disused or redundant railway infrastructure or their re-use for alternative transport, or active travel purposes as an interim measure. In relation to making appropriate contributions towards local infrastructure which would be affected by the proposal, as required by Policies SP3 and SP10, there is no evidence that the scheme would put unacceptable pressure on local health services and the Council confirms that a contribution towards education would not be required as sufficient school capacity currently exists locally to accommodate the likely number of children who would occupy the proposed development.
8. In terms of meeting Policy SP3's other criteria, the appellants state that the proposal would seek to minimise importing new materials, utilising existing resources on site where possible. Whilst the Council queries the nature of fill material on site, it considers suitable foundations could be designed to deal with any instability. Although only limited borehole testing of that material has taken place, Natural Resources Wales (NRW) is satisfied that any land contamination, and necessary remediation and monitoring, could be suitably controlled by planning conditions. Eradication of invasive species on the site could also be controlled by a planning condition, as could shorter-term construction stage pollution, including noise and dust emissions, to safeguard the living conditions of neighbouring occupiers from such effects. Whilst the proposal pre-dates the Council's requirements under Policy ENT10 for an Energy Masterplan demonstrating selection of the most sustainable low carbon heating technology, the scheme would incorporate sustainability measures to reduce the environmental impact associated with buildings and minimising the demand for energy, water, materials and the creation of waste and there is no evidence to suggest that such technology could not be employed within the viability limits of the proposal. The availability of high-speed digital infrastructure could be secured by condition.
9. Owing to ground conditions, the use of soakaways is not considered appropriate and surface water drainage to the south of the Waunscil Spur would therefore be directed, via an attenuation tank and a new length of storm water sewer, to an existing system south of Coychurch Road. Surface water from the northern part of the site is intended to drain to an existing culverted watercourse and would incorporate sustainable drainage systems

(SuDS). The Council objected to this part of the scheme because of unspecified health and safety concerns at the intended connection location and its view that Dŵr Cymru-Welsh Water (DCWW) would not allow any infrastructure within necessary easements associated with the strategic water mains running along much of the site.

10. However, whilst DCWW identified that some of the intended dwellings would be likely to encroach into required easements, it suggested conditions to safeguard the integrity of these strategic assets which it says cannot be diverted, and it did not raise any specific concern regarding the surface water drainage proposals. Moreover, all new developments of the scale of the appeal proposal are required to include sustainable drainage systems (SuDS) to comply with statutory standards. Approval for the scheme's sustainable drainage strategy must be obtained from the SuDS Approval Body (SAB) before construction can begin. I consider therefore that appropriate arrangements for surface water drainage could be made.
11. Owing to the site's narrow and elevated configuration to the north, the proposal would make the most efficient use of the land by locating housing development at the widest and flattest part of the site to the south whilst an active travel route would run the length of the site, including along the elevated and narrow portion to the north. The proposal occupies part of an identified active travel route (INM-BR-24) and the scheme's intended route could provide a link to the existing network south towards Coychurch Road. The development would also provide a new link to an existing route at the rear of Vernon Street and Charles Street, which the Council identifies as an intended upgraded route (INM-BR-74). The appeal site route would continue north but terminate before reaching Rotary International Way. Despite a considerable difference in ground levels and landownership in this location, I consider the proposal would also provide an opportunity to link to a future, currently aspirational, active travel route (INB-BR-27). Whilst the Council raises concerns about the timing of the route's delivery to serve intended residents owing to the appeal scheme's viability, its anticipated construction costs have been taken into account and its provision is a matter which could be controlled through a planning condition. The appeal scheme would therefore maximise opportunities for active travel and promote connections within and outside the site to ensure efficient and equality of access for all.
12. However, there is no dispute between the parties, and I have no reason to disagree, that due to the particular circumstances of the appeal site and associated likely exceptional development costs, the proposal would not viably deliver an appropriate contribution towards affordable housing as required by RLDP Policy COM3.
13. The appeal scheme would fall substantially short of RLDP requirements for the provision of a satisfactory standard of outdoor recreation space on all new housing developments, particularly in relation to the provision of an equipped play area. However, the appeal site is allocated under RLDP Policy COM11 as Natural Greenspace (COM11(7) Land off Waunscil Avenue, Bridgend) which acknowledges that informal, yet high quality and accessible green spaces can promote nature conservation and biodiversity as well as enhancing the quality of life of individuals and communities and so promotes the provision of such spaces wherever suitable opportunities arise. Although allocated, the appeal site is privately owned and only has limited accessibility via existing public rights of way. The parties agree on its historic informal amenity use by local residents, however, much of the site was overgrown and impenetrable at the time of my site visit, with small-scale fly-tipping evident. The Council does not provide evidence of any intended scheme to improve public access or the site's quality or indicate how these benefits would be secured in the absence of a catalyst such as the appeal scheme.

14. Notwithstanding that much of the available site would accommodate housing, and the steep embankments to the north would be largely unusable space, the appeal proposal would provide a suitable opportunity to formalise public access to the site's available greenspace and to secure the wider benefits sought under Policy COM11. I consider that the appeal scheme would suitably provide Natural Greenspace in accordance with Policy COM11 and that the deficiencies in outdoor sport and equipped play area provision would be outweighed by the substantial public benefits of the formalised access to Natural Greenspace. However, whilst a management scheme could be secured by a planning condition, the viability assessment makes no financial provision for future maintenance of open spaces, and it has not therefore been demonstrated that appropriate future maintenance of the offered facilities could be secured to retain their long-term benefits.
15. Policy COM11 recognises that Natural Greenspace areas are important components of the wider green infrastructure network to protect and enhance biodiversity and ecological resilience. In doing so, Policy DNP8 requires that development proposals integrate, protect and maintain existing green infrastructure assets and to enhance the extent, quality, connectivity and multi-functionality of the green infrastructure network; where the loss or damage of existing green infrastructure is unavoidable, appropriate mitigation and compensation will be required and all developments must seek to maximise, as far as practicable, the amount of green infrastructure on the site.
16. This approach is supported by PPW which makes clear that where there may be harmful environmental effects, decision makers will need to be satisfied that any reasonable alternative sites (including alternative siting and design options) that would result in less harm, no harm or benefit have been fully considered. It also requires that the planning system should ensure that overall, there is a net benefit for biodiversity and ecosystem resilience, resulting in enhanced well-being. Schemes should be designed, amongst other things, to take into account the existing green infrastructure assets to ensure no fragmentation or loss of connectivity whilst maximising ecosystem resilience
17. The planning application pre-dated the requirement for a Green Infrastructure Statement but is supported by an ES which was supplemented by a revised Preliminary Ecological Appraisal (P.1536.21E, Sep 2022, Ascerta) and a revised Arboricultural Impact Assessment (P.1536.21C, Aug 2022, Ascerta). These set out a detailed assessment of existing ecological services and trees on the appeal site, including those protected by a Tree Preservation Order (TPO), and outline measures for their retention where possible as part of the scheme, and include Reasonable Avoidance Measures (RAMS) for hedgehogs, badger and reptiles.
18. Based on the submitted evidence, the appellants maintain that there would be little impact on ecology from the appeal scheme. Whilst I note the appellants' comments, little evidence has been presented that the location of dwellings and the intended layout of the appeal scheme has been designed to avoid or minimise loss of existing assets adjudged to be of local value and high local value, to maintain connectivity between the northern and southern parts of the appeal site, and off-site assets to the north and east. Neither does the proposal demonstrate that the intended provision of bat and bird boxes, and a native species landscaping proposal would measurably compensate for and mitigate such loss or enhance the ecological and biodiversity value of the site and so meet local and national planning policy objectives.
19. In terms of its layout and design, the proposal would broadly deliver the density expected by Policy COM6 and be set out so that the proposed dwellings would largely be orientated to face the road, whilst some would overlook the intended equipped play area, and in doing so, provide natural surveillance and promote community safety. However,

Policy COM6 seeks the most efficient use of land without compromising the quality of the living conditions provided, whilst making adequate provision for privacy and space about dwellings. It states that development must seek to create mixed, socially inclusive, sustainable communities by providing a range of house types and sizes to meet the needs of residents, with reference to the evidence within the latest Local Housing Market Assessment (LHMA). Albeit that I saw during my site visit that there is a mix of house types and styles locally, including large three-storey blocks forming part of a densely developed linear formation at Waunscil Avenue which the appeal scheme would reflect in terms of general form and scale and the layout of dwellings, I have seen no evidence that the appeal scheme has been designed to respond to the identified needs for a range of different house types and sizes in Bridgend. The appeal scheme would therefore fail to contribute to the creation of a mixed, socially inclusive, sustainable community.

20. With regard to the impact of the proposal on living conditions, although some trees would be retained, much of the existing vegetation on the site would be removed to facilitate the development. Despite intended landscaping, the tall three-storey form of the dwellings viewed from the bungalows at numbers 27 and 28 Gwaun Coed and numbers 13 and 14 Chorleywood Close in particular, which I saw are sited close to their own boundaries, would be unacceptably dominant whilst their relative proximity would give a perception of being overlooked. Whilst, owing to its intended elevated position centrally on the site, and the ability to provide landscape screening to the embankments, the active travel route and its proposed link to an existing route at the rear of Vernon Street and Charles Street would not cause unacceptable overlooking to nearby neighbours in that location, and the development's formalised access to Natural Greenspace would compensate for the limited garden space within some of the intended plots, the appeal scheme would not therefore ensure that the amenity of neighbouring uses and those of intended occupiers would not be adversely affected.
21. I have had regard to previous appeal decisions in relation to the development of this site but whilst there may be similarities in the conclusions reached in relation to viability, and the provision of accessible open space and a community route, and the effects on living conditions, I have not been provided with full details of those cases and have reached my conclusions against the up-to-date development plan framework and on the merits of the appeal proposal.
22. I have taken into account the benefits to the local economy of 60 construction jobs, and through the creation of an active travel route and the provision of Natural Greenspace. Whilst these would be substantial, they would not outweigh the proposal's failure to demonstrate secured future maintenance of the open spaces, or its harmful effects on the living conditions of neighbouring occupiers, its failure to demonstrate that it would provide an appropriate mix of housing to meet identified needs locally as well as its inability to provide an appropriate contribution towards affordable housing, or the considerable harm which would arise through the scheme's failure to demonstrate avoidance of harm to green infrastructure and to provide biodiversity enhancement.
23. I conclude that the proposed development would not align with the placemaking aim of national planning policy, having regard to adopted local policy. The proposal would therefore fail to comply with FW, PPW and Policies SP3, COM3, COM6, COM10, DNP8 and COM11.

Highway Safety

24. Policies PLA11 and SP5 require, amongst other things, that developments are served by appropriate parking provision. Policy SP5 also requires improvement measures to mitigate the impact of the development on the surrounding road network, seeking, where

necessary, planning obligations to ensure that the effects of developments are fully addressed in order to make the development acceptable. The policies are supported by the Council's adopted Supplementary Planning Guidance 17 'Parking Standards' (SPG17) which seeks to balance the need to reduce unnecessary car journeys against levels of car ownership by providing realistic levels of parking within residential developments and maximum levels of parking at other locations. It recognises however that both off-street allocated space and unallocated on street space can provide suitable parking for residential developments (points of origin) provided the use of on street spaces will not create obstruction/congestion for other road users. SPG17 recognises the potential for some reduction to residential parking levels by application of its sustainability index.

25. However, although the appeal scheme was amended to provide additional parking spaces, parking for plots 20 to 60 would be deficient by 42 spaces. Whilst the appellant argues that maximum parking standards should not be applied as the appeal site is in a sustainable location, the overall score for the proposal against the SPG's sustainability index was insufficient to allow any reduction. Given the extent of the deficiency in required parking provision to serve the intended dwellings, I consider the proposal would be likely to give rise to extensive indiscriminate and inappropriate parking and associated manoeuvres which would be harmful to highway safety. Although the Council have suggested conditions to require revised schemes for residential and visitor parking, there is no certainty that appropriate provision could be achieved within the proposed layout, whilst interested parties would not have been given an opportunity to comment on any material changes to the layout which may be necessary to meet such conditions' requirements.
26. The Highway Authority did not object to the proposed development in relation to any highway safety concerns on Waunscil Avenue. I saw that this road can accommodate two-way traffic as well as on street parking and given the low speed and nature of the likely traffic from a residential scheme, I have no reason to reach a different conclusion. The Highway Authority did however identify capacity issues to the south of the site at the junction of Tremains Road with Coychurch Road. Although the Council provided no attributable accident statistics, I saw during my early morning site visit that these roads carry a steady volume of traffic, including pedestrians and cyclists, and that signal changes at the junctions can cause queuing which the Council says leads to unacceptable manoeuvres as drivers pass queuing vehicles to access nearby junctions but do so travelling towards oncoming traffic.
27. The appellants' Technical Note 22004 Coychurch Road (25 April 2022, JCT) demonstrates that the effects of additional traffic from the proposed development, taking into account adjustments to the sequence of traffic signals to alleviate queuing, would be acceptable. Although the Council notes the appellants' contention that a planning condition could ensure the necessary data would be supplied to the Highway Authority to allow it to adjust the traffic signal phasing, and has suggested a condition to this effect, the Council nevertheless states its officers would require specialist assistance to complete the works and has set out the anticipated associated costs. It is not appropriate to seek a financial contribution through a planning condition. As no other formal mechanism has been offered to meet the costs of necessary transport measures, I cannot be satisfied that the appeal scheme would appropriately address this matter.
28. I conclude that it has not been demonstrated that the proposal would not harm highway safety. The proposal would therefore fail to comply with Policies PLA11 and SP5 and SPG17 advice.

Other Matters

29. The appeal site is partly located within a Category 2 Limestone Mineral Safeguarding Zone identified by Policy ENT12. Owing to its intended location, the Council does not consider the appeal scheme would prejudice this safeguarded resource and from the evidence before me I have no reason to reach a different conclusion on this matter.

Conclusion

30. For the reasons given above and having taken all other matters into account, I conclude that the appeal should be dismissed.

31. 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 Minister's wellbeing objectives as required by section 8 of the Act.

N Jones

INSPECTOR