
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 13/01/17

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

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 01.02.2017

Appeal Decision

Site visit made on 13/01/17

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

an Inspector appointed by the Welsh Ministers

Date: 01.02.2017

Appeal Ref: APP/A6835/A/16/3156854

**Site address: Land south of Kinnerton Lane, Higher Kinnerton, Flintshire, CH4
9BG**

**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 failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Elan Homes Ltd against Flintshire County Council.
 - The application Ref 054770, is dated 23 December 2015.
 - The proposal is residential development comprising the erection of 56 dwellings, access, open space and associated infrastructure.
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Decision

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

Main Issue

2. Following the submission of the appeal the Council determined the application and refused to grant planning permission on one ground alleging that insufficient information had been submitted to determine that the development would not increase the risk of flooding.

Reasons

Flood risk

3. The site comprises a 2.9 hectare field adjacent to but outside the settlement boundary of Higher Kinnerton as defined in the Flintshire Unitary Development Plan 2000 – 2015, adopted 2011(UDP). The development would include provision for the storage of surface water on site in subterranean tanks. The stored water will be released at a rate equivalent to the greenfield run off rate to a drainage ditch on the southern boundary of the site which ultimately outfalls to a brook.
4. Higher Kinnerton Community Council commissioned a consultant to produce a critique of the appellant's Flood Consequences Assessment (FCA). The analysis raises a number of concerns and I note that Natural Resources Wales (NRW) also raise a few questions in relation to the FCA. However, the appellant's consultants have produced a detailed (and in my view satisfactory) response to the matters raised by the

Community Council. I visited The Pines and its occupants are understandably concerned regarding the impact of the proposed development on the flows through the ditches and pipes that skirt their property. However, NRW has no objection subject to the imposition of a condition ensuring that surface water run off does not exceed existing rates. Dŵr Cymru has no objection subject to a condition requiring the implementation of an approved drainage scheme.

5. The Council has not produced a statement to support its case in this appeal. The Council's officers recommended that planning permission be granted subject to conditions including drainage. The Council has submitted no technical evidence to substantiate the reason for refusal or to show that its concerns cannot be resolved through the imposition of a condition. I see no reason to question the views of NRW, Dŵr Cymru or the Council's professional officers in this respect. Subject to a condition relating to surface water drainage, I conclude that the proposed development would not increase the risk of flooding and that it complies with Policies STR1(e) and GEN1 of the UDP.

Other considerations

6. The UDP is time expired and the Council cannot demonstrate a 5 year supply of housing land. In such cases Technical Advice Note 1: Joint Housing Land Availability Studies (TAN1) states that; *'The need to increase supply should be given considerable weight when dealing with planning applications provided that the development would otherwise comply with the development plan and national planning policies'*.
7. As stated above the site lies outside the settlement boundary. Policy STR1(a) of the UDP states that new development should generally be located within existing settlement boundaries and Policy GEN3 exercises strict control over new housing in the countryside. The development proposed is not of a type permitted by Policy GEN3 but I agree with the Council that there are other material considerations which outweigh this conflict¹.
8. The extent to which Flintshire is failing to meet its housing need is not expressed but the Council's suggestion that the standard time limit for implementation be reduced from five to two years perhaps gives an indication. Higher Kinnerton has a range of facilities and services including primary school, public houses and shops and the Council considers it to be a settlement capable of accommodating further development in a sustainable manner. In addition to increasing overall housing supply the development would help meet an identified need for affordable housing. Further, I agree with the Council that the development would assimilate comfortably into the existing settlement².
9. It is argued by some that Higher Kinnerton has reached the 10% growth limit set by the UDP and that granting planning permission would be premature pending the production of the Council's Local Development Plan (LDP). However, the indicative limit was based on evidence to support what is now a time expired UDP. Further, from what I have read the anticipated date for the adoption of the LDP is October 2019³. In the absence of any imminent plan led solution to the lack of housing supply, I consider that the need to increase supply combined with the lack of harm and sustainable location outweighs the conflict with Policies STR1(a) and GEN3.

¹ This conflict is not a reason for refusal nor have I seen anything to indicate that the Council takes a view different to that set out in the officers' committee report.

² This is not a reason for refusal and I have not seen anything to indicate that the Council takes a view different to that set out in the officers' committee report.

³ Paragraph 21 appeal decision reference APP/A6835/A/16/3143624 (Chester Road, Broughton)

10. The appellant proposes an extension to the traffic calming scheme on Main Road and an extension of the 30 mph speed limit on Kinnerton Lane. Subject to these measures, a new footway and conditions relating to other matters the Highway Authority has no objection to the proposal. I do not consider all the conditions sought by the Highway Authority to be necessary but there is no technical evidence before me to lead me to otherwise question the Highway Authority's position.
11. There are two listed buildings visible from the site and Cadw has expressed concern regarding the impact of the proposed development on the setting of Kinnerton Lodge and Compton Hall Farm (both Grade II). Kinnerton Lodge is a regency villa with its main aspect (including a central two storey bay) providing views over fields towards Higher Kinnerton. The 1914 ordnance survey map for the area suggests that the appeal site was part of the parkland surrounding the house and it is clearly part of its setting. The proposed development would extend no further west than the adjoining housing estate. The field to the south of Kinnerton Lodge would continue to provide a sense of space and separation from Higher Kinnerton and I do not consider that the proposed development would detract from an appreciation of the standing and place of the Lodge in the area. Compton Hall Farm would be divorced from the proposed development by the adjoining housing estate. As a consequence the impact of the proposed development on the setting of Compton Hall Farm would be negligible. I consider, therefore, that the setting of these listed buildings would be preserved.
12. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (the WBFG Act). In reaching my decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of supporting safe, cohesive and resilient communities.

Conditions and planning obligations

13. The local planning authority has not submitted a schedule of detailed conditions (with reasons) it wishes to see imposed should the appeal be allowed⁴. There is, under the heading 'Conditions' in the officers' committee report, a list of matters officers' consider should be controlled through conditions. I have based my considerations on this list and the advice in Welsh Government Circular 016/2014.
14. The standard time limit for implementing full planning permission is 5 years but the Circular allows shorter time periods to be imposed where appropriate and where local planning authorities give reasons for doing so. The Council has produced a Developer Guidance Note which sets out the approach it will take to what it describes as speculative housing development proposals. Although approved by Flintshire's Cabinet, I have seen nothing to indicate that this non statutory guidance was subject to consultation. It is not founded on the UDP, I have concerns regarding its fit with national policy⁵ and consequently I afford it limited weight. However, in light of the lack of a 5 year land supply, I accept that a reduced time limit is appropriate in this case. I see no need for a phasing plan for a development of only 56 houses.
15. The appellant's archaeological report identifies features worthy of investigation on the site and a condition is necessary to secure this. I shall, in the interests of the visual

⁴ Some of the consultees have provided detailed conditions.

⁵ I see nothing in national policy that requires applicants, as a matter of course, to submit a full application, sustainability appraisals, viability assessment or a housing delivery statement.

amenity of the area, impose conditions relating to materials, landscaping and tree protection. However, I do not consider the details of external finishes on the submitted plan to be precise and will require the submission of samples. I have seen nothing to persuade me that the landscaping scheme or tree protection measures submitted with the appeal application are inadequate and see no need to require further details.

16. In the interests of highway safety it is necessary to secure the traffic calming, footway and footpath improvements and other highway improvements proposed by the appellant. It is also necessary to secure the provision and retention of visibility splays and control parking and loading and unloading throughout construction. However, as the layout, parking spaces and position of garages is shown on the approved plans, I see no need to impose conditions relating to them. Further, the Highway Authority's reason for the layout and signage condition is to ensure that the road system is constructed to a standard suitable for adoption. This is clearly not a condition that has a planning purpose and its imposition would be contrary to the advice in the Circular. Nor do I see a need to require the submission of a Construction Management Plan. I have seen nothing to justify requiring access and egress routes, duration of the works, typical working days and hours (which also fails the test of precision) or the timing of deliveries. The Highway Authority has the power to deal with the deposition of deleterious material on the highway or obstructions.
17. Whilst Dŵr Cymru seek the imposition of condition relating to foul drainage it also acknowledges that '*no problems are envisaged with the Waste Water Treatment Works of domestic discharges from the site*'. Consequently, I see no reason to duplicate Building Control requirements. The application is supported by a Ground Investigation Report which concludes '*No contamination was encountered on site and therefore no specialist remedial action is required*'. I note the comments of the Council's Pollution Control Officer but have no reason to doubt the credentials of the appellant's consultants nor seen any technical evidence to lead me to doubt their conclusions.
18. The appellant submits a unilateral undertaking which includes provision for affordable housing and contributions towards education and public open space. I am satisfied that these contributions are necessary and comply with the requirements of the Community Infrastructure Levy Regulations 2010.

Conclusions

19. For the reasons given above and having regard to all matters raised, I conclude that the appeal should be allowed and planning permission granted.

A Thickett

Inspector

Schedule 1**APP/A6835/A/16/3156854**

The appeal is allowed and planning permission is granted for residential development comprising the erection of 56 dwellings, access, open space and associated infrastructure at land south of Kinnerton Lane, Higher Kinnerton, Flintshire, CH4 9BG in accordance with the terms of the application, Ref 054770, dated 23 December 2015, subject to the following conditions:

- 1) The development shall begin no later than two years from the date of this decision.
- 2) The development shall be carried out in accordance with the plans listed in Schedule 2.
- 3) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a scheme of investigation that has been submitted to and approved in writing by the local planning authority. The programme of work will be carried out in accordance with the approved scheme.
- 4) Notwithstanding the plans and details submitted in support of the application no development shall commence until details of a scheme for the disposal of surface 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 hereby permitted and retained for as long as the development hereby permitted remains in existence.
- 5) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority.
- 6) No development shall commence until a scheme for the parking of vehicles of site operatives and visitors and loading and unloading of plant and materials throughout the period of construction has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No development shall take place, nor shall there be any site clearance, until the protective fencing shown on drawing number Arbtech TPP 01/B has been erected. The measures to protect trees described on drawing number Arbtech TPP 01/B shall be adhered to throughout the course of the development.
- 8) Notwithstanding the plans and details submitted in support of the application no development shall take place until schemes for:
 - i) Alterations to the road width of Kinnerton Lane
 - ii) Provision of a footway along the northern boundary of the site from the point Footpath No. 5 joins Kinnerton Lane and on to Main Road (as shown on drawing number HK-PL-002-L)
 - iii) Extending traffic calming on Main Road
 - iv) Provision of a lit footway along the western boundary of the site from the point Footpath No. 5 joins Kinnerton Lane to the south western corner (as shown on drawing number HK-PL-002-L)
 - v) Improvements to Footpath No. 5 from the point it joins the site at its south western corner to Park Avenue
 - vi) Improvements along Park Avenue to its junction with Main Road

have been submitted to and approved in writing by the local planning authority. The approved works shall be carried out before the first dwelling hereby permitted is occupied.

- 9) The visibility splays shown on plan no. 1455/01(D) shall be in place before any other works take place and retained free of any obstruction exceeding 0.6m in height during construction works and thereafter for as long as the development hereby permitted is in existence.
 - 10) All planting, seeding or turfing and hard landscaping works shown on drawing numbers HK-LL-001.Rev G and Ref:HK-PL001.Rev L and the drawings listed under Wall and Fence Details in Schedule 2 shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
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Schedule 2

APP/A6835/A/16/3156854

Plans

Location Plan Ref: LP-001

Planning Layout Colour Ref:HK-PL001.Rev L

Hard and Soft Landscaping Layout Ref HK-LL-001.G

Street Scenes Dwg No HK SS 001 Rev D

Proposed Access Arrangements: (ref:1455/01/D)

Tree Protection Plan. Arbtech Consulting Ltd. (Ref: Arbtech TPP 01 RevB)

House types.

Bungalow Type 1: (Ref: - HK- /BUNG/01.RevC)	Bungalow Type 2: (Ref: - HK- /BUNG/02. Rev C)	Audley: (Ref: - HK-AUD-01.Rev C)
Howden: Ref: HK-HOW-01.Rev C)	Aviemore: (Ref: HK-AVI-01.Rev C)	Fairford: (Ref: HK-FAI-01.Rev C)
Alston: (Ref: HK-ALST-01.Rev C)	Brandon: (Ref: HK-BRN-01.Rev C)	Bunbury: (Ref: HK-BUN-01.Rev B)
Woodall: (Ref: HK-WO-01.Rev C)	Milburn Type 1 (Ref: HK-MIL-01.Rev C)	Stratford Type 2 (Ref:HK-STR-02.Rev C)
Milburn Type 2 (Ref: HK-MIL-02.Rev C)	Stratford Type 1 (Ref:HK-STR-01.Rev C)	Weston (Floorplans) (Ref: HK- WEST/01. Rev B)
Bordesley Type 1 (Ref: HK-BOR/1.Rev C)	Bordesley Type 2 (ref: HK-BOR/2.Rev C)	Chesham Type 1(Elevations) (Ref: HK- CHES/02. Rev C)
Weston (Elevations) (Ref: HK- WEST/02. Rev A)	Chesham (Floorplans) (Ref: HK- CHES/01. Rev A)	Mellor Type 1 (Elevations) (Ref: HK- MELL-02. Rev C)
Chesham Type 2 (Elevations) (Ref: HK- CHES/03.Rev C)	Mellor (Floorplans) (Ref: HK-MELL- 01.Rev A)	
Mellor Type 2 (Elevations) (Ref: HK- MELL-03. Rev C)	G Series Garages)(Ref HK-GAR-01.Rev C)	

Wall and Fence Details

Show Area Railings(Ref: EXT- WORK- FENCE-G-04. Rev A)	1800mm High Standard Screen Wall (Ref: EXT WORKS WALL G-11. Rev B)	1800mm High Close Boarded Fence (Ref: EXT WORK FENCE G-06 Rev A)
Typical Garden Gates (Ref: EXT WORKS FENCE G-16 Rev A)	Post and Rail Fence (Ref: EXT WORKS FENCE SPECIAL. Rev A)	