

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 05/01/21

gan Vicki Hirst, BA (Hons) PG Dip TP
MA MRTPI

Swyddog a benodir gan Weinidogion Cymru

Dyddiad: 12th February 2021

Appeal Decision

Site visit made on 05/01/21

by Vicki Hirst, BA (Hons) PG Dip TP MA
MRTPI

An Inspector appointed by the Welsh Ministers

Date: 12th February 2021

Appeal A Ref: APP/U6925/C/20/3258177

Site address: Caravan, rear of 2 Ynysygored Cottages, Aberfan Road, Aberfan, CF48 4QD

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Norman Stephens against an enforcement notice issued by Merthyr Tydfil County Borough Council.
- The enforcement notice was issued on 30 July 2020.
- The breach of planning control as alleged in the notice is without planning permission, the siting of a caravan for residential purposes.
- The requirements of the notice are to permanently remove the caravan and any other associated domestic paraphernalia from the land edged red.
- The period for compliance with the requirements is 24 weeks beginning with the day the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Appeal B Ref: APP/U6925/A/20/3262255

Site address: Caravan, rear of 2 Ynysygored Cottages, Aberfan Road, Aberfan, CF48 4QD

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 refusal to grant planning permission.
- The appeal is made by Mr Norman Stephens against the decision of Merthyr Tydfil County Borough Council.
- The application Ref: P/20/0098 dated 10 April 2020, was refused by notice dated 22 June 2020.
- The development proposed is the siting of a static caravan for residential purposes.

Decisions

Appeal A

1. The enforcement notice is varied by replacing paragraph 6 with the following: "Time for Compliance: 52 weeks from the date on which the notice takes effect". Subject to this variation I dismiss the appeal, uphold the notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. The appeal is dismissed.

Procedural Matters

3. There are two separate appeals before me. As they both relate to the same development, to avoid duplication, I have dealt with the two together, except where otherwise indicated.
4. Amended location and site plans were submitted to the Council during the processing of the application the subject of Appeal B. As the Council took the plans into account in reaching its decision, I have made my determination of Appeal B on the same basis.
5. Due to restrictions in relation to the Covid-19 pandemic, I did not view the interior of the caravan on my site visit. As there is no dispute between the parties that the caravan is being used for residential purposes, I am satisfied that I am able to reach my decisions without an interior inspection.

Appeal A (Ground a), the Deemed Application for Planning Permission and Appeal B

Main Issues

6. The main issues are:
 - Whether the site is appropriate for residential development having regard to planning policies that seek to control new development in the countryside and its effect on the character and appearance of the area;
 - Whether the site is appropriate for residential development having regard to its flood zone location; and
 - Whether there are other material considerations that would justify granting permission with particular regard to the appellant's circumstances.

Reasons

Countryside

7. The site is located to the rear of two cottages on the outskirts of Aberfan. It lies outside the settlement boundaries as defined within the adopted Merthyr Tydfil County Borough Replacement Local Development Plan (the LDP) and within the countryside. Policy SW4 of the LDP states that outside defined settlement boundaries, development will not be permitted unless it is for certain purposes defined in the policy.
8. There is no dispute between the parties that the caravan is occupied for residential purposes. No case has been made that the caravan meets any of the purposes listed in policy SW4 and the appellant acknowledges that the development does not accord with the development plan in this regard. I have no reason to disagree.
9. Whilst the site is positioned to the rear of two dwellings and in proximity to other buildings, from my observations on site, the development is located within a field and adjacent to land that is primarily used for grazing horses with associated stabling. It does not comprise an infill site or rounding off of a settlement and is clearly located within the countryside.

10. I note that a Certificate of Lawfulness for an existing development found the use of the caravan in association with the building of stables on the land to be permitted development¹. I note this related to the temporary use of the caravan for providing facilities during the construction of a stable block. It is not uncommon for caravans to be provided for purposes associated with a temporary construction and I do not find this a persuasive argument to justify the use of the caravan for a residential use within the countryside.
11. I find the location of the caravan is in conflict with the fundamental principles of directing development to sustainable locations in existing settlements rather than to undeveloped land in the countryside, largely divorced from local services and facilities.
12. In addition, public views of the caravan are available from locations on the public highway and pavement and from the adjoining properties. Whilst such views are screened to a certain extent due to the caravan's position set back from the road and behind a fence with screening, it is nevertheless an alien and discordant feature in this countryside location and is not appropriate to its local context as required by policy SW11 of the LDP.
13. The development is not in accord with policy SW 4 or SW11 of the LDP. I conclude that the site is not appropriate for residential development having regard to planning policies that seek to control new development in the countryside. It is harmful to the character and appearance of the area.

Flooding

14. Policy EnW4 of the LDP requires development to demonstrate that it will not result in an unacceptable impact on people from, amongst other things, surface or ground water. The site is located within an area categorised as a C1 flood risk zone defined in Technical Advice Note 15 "Development and Flood Risk" (TAN 15) as an area of flood plain which is developed and served by significant infrastructure including flood defences. The development comprising a residential unit of accommodation falls under the category of highly vulnerable development under the terms of TAN 15.
15. In such areas, TAN 15 requires development to be justified by being necessary to assist, or be part of, a local authority regeneration initiative or local authority strategy to sustain an existing settlement, or be necessary to contribute to key employment objectives supported by the local authority or key partners to sustain an existing settlement or region. If it is for one of those purposes, the development must also meet the key aims of Planning Policy Wales (PPW) and meet the definition of previously developed land and the potential consequences of a flooding event for the development must be considered and be found to be acceptable.
16. It has not been demonstrated that the development is for any of the identified initiatives or strategies set out above. Furthermore, the site does not comprise previously developed land and, given its location within the countryside, would not meet the key principles of achieving the right development in the right place advocated by PPW.
17. The appellant has provided a Flood Consequences Assessment (the FCA) and contends that this demonstrates the development could be made acceptable by raising it by 1.1 metres above ground level to mitigate for a flood event. Natural Resources Wales (NRW) has commented that the FCA has been based on a mapping study that does

¹ LPA Ref: P/18/0162

not include the climate change allowance of 25% and the predicted depths of flooding may be greater than assessed. It also comments that no assessment of the predicted flood risk of access and egress routes have been provided. NRW notes that the site has previously flooded.

18. I find the FCA does not provide conclusive evidence that the potential consequences of a flooding event for the development would be adequately mitigated for. Notwithstanding, in any event the FCA does not override national planning policy advice advocated in TAN 15 of restricting development in C1 flood zones to that justified as part of an overall initiative or strategy and being on previously developed land.
19. I conclude that the site is not appropriate for residential development having regard to its location in a C1 flood zone. It is not in accord with policy EnW4 of the LDP or national planning policy advice in this respect.

Other Material Considerations

20. The appellant's case is predicated largely on his personal circumstances. He contends that such matters are important material considerations that outweigh the conflict with the development plan.
21. The caravan is used as the appellant's living accommodation and it is situated in close proximity to a family member's home who assists with care, support and daily chores. I have been provided with various information and correspondence in respect of the appellant's personal situation, health and wellbeing including from medical professionals. From this information, I have no doubt that the caravan provides the appellant with living arrangements that are beneficial to his health and wellbeing with associated support close by.
22. As a consequence of these personal circumstances, the rights set out in the Human Rights Act 1998 (HRA) are engaged. Specifically, Article 8 of the European Convention on Human Rights, incorporated into the HRA, requires that decisions ensure respect for private and family life and the home.
23. It is clear that dismissing this appeal would interfere with such rights. Nevertheless, such rights are qualified, and interference may be justified where it is proportionate and in the public interest.
24. The overarching approach and principles relating to the location of development and protection of the countryside advocated by national planning policy advice and the development plan are public interest matters. It is also in the public interest to not allow development within areas liable to flooding.
25. Whilst I acknowledge the difficulties the appellant is experiencing; this must be balanced against the wider public interest. I have no compelling evidence that the appellant's medical conditions require him to live in this location or that the need for family support could not equally be met by him residing in an alternative location. Whilst a temporary and personal permission is being sought for the appellant's lifetime, I do not find this would override the harm caused by allowing the caravan to remain in the open countryside for an indeterminate length of time. In my assessment the public interest of ensuring that the key principle of directing the right development to the right place overrides the appellant's personal circumstances in this case. As such, I find the interference with the appellant's rights is proportionate and in the public interest in this case.

26. In conclusion, I do not find the other material considerations cited to outweigh the conflict with the development plan in this instance. I find the conflict with the development plan and national planning policy that direct development to settlement areas and areas outside those at risk of flooding to be compelling reasons to refuse the development.
27. I have taken into account all other matters raised but find none that outweigh my findings. As such Appeal A on ground (a), the deemed planning application and Appeal B fail.

Appeal A (Ground g)

28. This ground of appeal is that the time given to comply with the requirements of the notice is too short. The appellant contends that 24 weeks is too short a time due to the need to find alternative and suitable accommodation and would be contrary to the Human Rights Act. He considers that a temporary period relating to the appellant's lifetime or a period of 52 weeks would be more appropriate.
29. I have considered the implications of allowing the caravan for a temporary period for the appellant's lifetime above and found this would not be acceptable. Nonetheless, it is important that a reasonable period be given to enable the appellant to look for alternative accommodation. Equally, the unauthorised development should not be allowed to continue for longer than is necessary, given its inappropriate location in the countryside and within an area at risk of flooding. I agree that a period of 52 weeks instead of the 24 weeks set out in the notice would strike the appropriate balance between these two conflicting interests.
30. I have also considered the impact that the current pandemic and its associated travel restrictions may have on the appellant's ability to seek alternative accommodation. I am satisfied that extending the compliance period to 52 weeks would provide an additional period of time with regard to such considerations.

Conclusions

31. I have taken into account all other matters raised but find none that outweigh the above conclusions. Appeal A fails on ground (a) but is successful to a limited extent on ground (g). The application deemed to be made under section 177(5) of the Act as amended is refused. Appeal B is dismissed.
32. In reaching my decisions 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 well-being objectives as required by section 8 of the WBFG Act.

VK Hirst

INSPECTOR