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Sent: 05 May 2021 15:27
To: Planning
Subject: Planning Inspectorate APP/U6925/A/20/3259412: Land to the south of Maes Meyrick, CF48 1RZ
Attachments: Despatch Cover Letter (W) - Judith Jones - 05 May 2021.pdf; Appeal Decision - 3259412.pdf; Feedback, Complaints and Challenges Wales - Adborth, Cwynion a Heriai yng Nghymru 2017.pdf

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DPC:76616c646f72





The Planning Inspectorate Yr Arolygiaeth Gynllunio

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Miss Judith Jones
Merthyr Tydfil County Borough Council
Ty Keir Hardie
Riverside Court
Avenue De Clichy
Merthyr Tydfil
CF47 8XF

Eich Cyf/Your Ref: P/20/0138
Ein Cyf/Our Ref: APP/U6925/A/20/3259412

05 May 2021

Dear Miss Jones,

Town and Country Planning Act 1990
Appeal by Mr & Mrs . James

Site Address: Land to the south of Maes Meyrick, Heolgerrig, Merthyr Tydfil,
Merthyr Tydfil, CF48 1RZ

Amgaeaf benderfyniad yr Arolygydd
ar yr apêl uchod.

I enclose the Inspector's decision on the
above appeal.

Pan fyddwch wedi darllen llythyr y
penderfyniad yn llawn, neilltuwch yr
amser i lenwi ein holiadur Adborth
wedi'r Penderfyniad. Mae'r holiadur
ar gael ar-lein yn:

Once you have read the decision
letter fully, please take the time to
complete our Post Decision Feedback
questionnaire. The questionnaire is
available online at:

<https://www.surveymonkey.com/s/PostDecisionQ>

Yours sincerely,

Judith Birch

Judith Birch

Rydym yn Croesawu Gohebiaeth yn Gymraeg a Saesneg

We Welcome Communications in Welsh and English

Where applicable, you can use the internet to submit documents, to see information and to check the progress of cases through GOV.UK. The address of the search page is - <https://www.gov.uk/appeal-planning-inspectorate>



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 13/04/21

**gan Melissa Hall, BA (Hons), BTP, MSc,
MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 5/5/21

Appeal Decision

Site visit made on 13/04/21

**by Melissa Hall, BA (Hons), BTP, MSc,
MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 5th May 2021

Appeal Ref: APP/U6925/A/20/3259412

**Site address: Land to the south of Evieon, Maes Meyrick, Heolgerrig, Merthyr
Tydfil, CF48 1RZ**

**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 James against the decision of Merthyr Tydfil County Borough Council.
 - The application Ref: P/20/0138 dated 26 May 2020, was refused by notice dated 14 August 2020.
 - The development proposed is described on the planning application form as a replacement dwelling.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the application was determined by the Council, the Welsh Government has published Future Wales: the National Plan 2040 and Planning Policy Wales, Edition 11 (PPW 11). I am satisfied that neither publication makes any material difference to the main issue in this case.

Main Issues

3. These are the effect of the proposed development on the character and appearance of the area, ecology and highway safety.

Reasons

Character and appearance

4. The appeal site is an irregularly shaped parcel of land which slopes steeply in an easterly direction; it is clear from the topographical survey submitted with the appeal that there is a difference in the order of 10 metres between the ground level at the point of access and the part of the site on which the proposed dwelling would be sited. There is a watercourse running through the site in a south-west to north-east direction, over which the proposed access would cross. I saw that there are a number
-

of trees and dense vegetation, particularly around the perimeter of the site and along the corridor of the watercourse, which are not shown on the submitted drawings.

5. At the bottom of the slope, and on the part of the site on which the house would be sited, stands part of a stone gable end and rubble stone that may once have formed the walls of a former building. An annotation on the submitted drawings indicate that it is, in fact, the ruins of a house.
6. The Council confirms that the site is in the open countryside. It therefore lies outside the settlement boundaries, which are defined in the adopted Merthyr Tydfil Replacement Local Development Plan 2020 (RLDP). For planning purposes, and in the context of RLDP Policy SW4, proposals regarded as 'countryside development' will not be permitted unless such development can meet one of the specified criteria, which relate primarily to agriculture or forestry, a rural enterprise or tourism, leisure or recreational facilities. However, the appellant considers that two of the criteria are relevant to matters at issue in this appeal; criterion (iii) relates to the re-use, adaptation or replacement of rural buildings and dwellings whilst criterion (x) requires the development to be a low-impact One Planet Development (OPD). It is no part of the appellant's case that the development would constitute any of the other exceptions listed.
7. Dealing with criterion (iii), the appellant argues that the proposal would replace a former dwelling. Conversely, the Council takes the view that the former dwelling was abandoned and, in doing so, has drawn my attention to two previous appeals on this site from 2001 and 2004¹. In the 2001 appeal, the Inspector noted that the former dwelling had been abandoned for many years and little remained of the structure. Meanwhile, the Inspector dealing with the 2004 appeal considered four tests to ascertain whether the dwelling had been abandoned, concluding that the former dwelling in effect ceased to exist and could not be reconstructed other than in the form of a totally new structure. There is no evidence before me that alters this position. Consequently, the development cannot meet the requirements of criterion (iii) of RLDP Policy SW4.
8. Turning to One Planet Development (OPD)². The appellant considers that the proposed dwelling would be of an exceptional architectural quality and a low impact design in order to mitigate any impacts that are contrary to planning policy.
9. However, Technical Advice Note 6 '*Planning for Sustainable Rural Communities*' (TAN 6) confirms that One Planet Developments located in the open countryside should, over a reasonable length of time, provide for the minimum needs of the inhabitants' in terms of income, food, energy and waste assimilation. Where this cannot be demonstrated, they should be considered against policies which seek to control development in the open countryside³.
10. The proposal is not supported by robust evidence including a Management Plan setting out the objectives and operational basis of the proposal, a Business Plan justifying the need to live on the site and quantifying how the inhabitants' requirements will be obtained from the site, an ecological footprint and carbon analysis, a biodiversity and

¹ Appeal Refs APP/U6925/A/01/1075300 and APP/U6925/A/04/1162138 refer.

² Planning Policy Wales defines One Planet Development as development that through its low impact either enhances or does not significantly diminish environmental quality.

³ Paragraph 4.15.2 of TAN 6.

landscape assessment, a community impact assessment or a transport assessment and travel plan⁴.

11. In light of the above, I am not convinced that proposal has been fully justified as an OPD or that it satisfies the very demanding policy requirements and guidance to make an exception to the general policy of strictly controlling development in the countryside.
12. For the reasons I have already given, I conclude that the proposal would conflict with RLDP Policy SW4 which seeks to direct new housing development to within settlement boundaries and strictly control development in the open countryside.
13. I note the appellant's assertion that there have been some changes to the policy framework since 2001. Be that as it may, the policies seeking to protect the countryside from unjustified residential development have not changed significantly and remain consistent with national planning policy in this regard.
14. Turning to the Council's second reason for refusal, which relates to matters of design and siting. The appellant explains that the design draws on the typology of the Welsh Vernacular barn, which has an elegant, rural simplicity. Reference is made to local agricultural buildings which have a large expanse of one material used continuously and a combination of unfussy large and fairly small openings, in an informal arrangement.
15. I do not take issue with the principle of a dwelling of a contemporary design. Neither do I find the simple form or external finishes objectionable. However, I am not persuaded that the large, extensive areas of glazing and their arrangement are appropriate in the context of the Welsh vernacular that has been described. In any event, the introduction of an additional dwelling at this location, with its associated garage, access and turning area, would extend the built form into an area of open countryside, thereby eroding its prevailing rural character. Whilst I accept that the site is not highly visible in its surroundings, I am not convinced that allowing sporadic development resulting in a more widespread distribution of residential development in the countryside outside the existing settlement would safeguard its character. Consequently, I consider that the failure of the proposed development to be appropriate to its local context would result in conflict with RLDP Policy SW11.
16. The Council has also alleged conflict with RLDP Policy EnW5, which seeks to protect landscape and Special Landscape Areas (SLA). Whilst there is no suggestion that the site falls within one of the designated SLAs, from my reading of this policy, it appears to relate to landscape character and quality throughout the County Borough and not only to the special qualities of SLAs.
17. The Council takes issue with the substantial loss of the existing woodland, which it considers forms part of the landscape character of this location. Although the appellant argues that the intention is to bring the drive in through scrubby grass thus avoiding the woodland, the drawings that accompanied the application do not accurately show the location of all trees on site nor is the extent of site clearance fully described in the submissions, which would enable this assessment to be made. Whilst the appellant has submitted a plan showing the areas of vegetation to be retained, this cannot be wholly accurate given that some of the areas shown as being retained are in close proximity to retaining works or the foundations for the dwelling and garage.

⁴ Sections 4.15-4.23 of TAN 6 set out the requirements of an OPD application.

18. In this context, I cannot be certain of the extent of the loss of the woodland. Thus, I can only conclude that any significant felling of trees and clearance of vegetation would erode the site's distinctive landscape characteristics. Furthermore, the visual impact associated with the introduction of further built form in an otherwise verdant setting would result in the development failing to assimilate well into its immediate and wider landscape setting. As such, I find conflict with RLDP Policy EnW5 in this regard.

Ecology

19. The Council confirms that the appeal site abuts the Cwm Glo Site of Importance for Nature Conservation (SINC) to the north east and the Cwm Glo a Glyndrys⁵ Site of Special Scientific Interest (SSSI) to the east. The proposed dwelling and garage would be sited in the order of 20 metres from the SINC and 13 metres from the SSSI.
20. RLDP Policy EnW1 is an overarching policy requiring new development to promote the resilience of ecosystems. In particular, it seeks to maintain and enhance biodiversity interests unless it can be demonstrated that: (i) The need for the development clearly outweighs the biodiversity value of the site; and (ii) The impacts of the development can be satisfactorily mitigated and acceptably managed through future management regimes.
21. Policy EnW2 deals specifically with nationally protected sites and species which, in this case, is the Cwm Glo a Glyndrys SSSI. It requires that development likely to have an adverse effect either directly or indirectly on the conservation value of an internationally or nationally designated site will only be permitted where there is no suitable alternative, the benefits clearly outweigh the special interest of the site and appropriate compensatory measures are secured (my emphasis). Where a development is likely to affect protected species, it will only be permitted where the population size, range, distribution and long-term prospects of the species will not be significantly adversely impacted, there is no suitable alternative, the benefits of the development outweigh the adverse impacts on the protected species and appropriate, avoidance, minimisation, mitigation, compensation and enhancement measures are provided (my emphasis).
22. Meanwhile, Policy EnW3 deals with locally designated sites including the Cwm Glo SINC. It states that development proposals likely to have an adverse impact will only be permitted where it can be demonstrated that the need for the development clearly outweighs the conservation value of the site, adverse impacts on nature conservation features can be avoided, and appropriate and proportionate mitigation and compensation measures can be provided (my emphasis).
23. The appellant has submitted an Ecological Assessment (EA), dated January 2020, which was informed by a phase 1 habitat survey and a field based assessment in respect of protected species. It states its objectives as identifying the habitats and potential for protected species to be present on site, determining whether there may be any impacts on protected species, providing recommendations for further survey work and suggesting outline mitigation and enhancement ideas and principles (my emphasis).
24. It identifies that the habitats on the site comprise of scattered trees, scrub and semi-improved grassland, but also confirms that the site supports habitats and features

⁵ The Council refers to 'Glyndryrs' in its officer report and subsequent appeal submissions whereas the spelling is shown as 'Glyndrys' in the RLDP Policy and the SSSI citation. I have therefore used the latter for the purposes of my decision.

included within the SSSI citation⁶. It clarifies that the site is of high local and moderate regional ecological importance due to the habitats present which have the potential to support nesting and breeding birds, great crested newts, reptiles, breeding birds and fritillary butterfly. The assessment also assumes that bats are likely to forage over the site. It concludes that mitigation will be required, together with an Ecological Mitigation Strategy and Management Plan, to ensure that no harm comes to the SSSI and the SINCR, retained habitats and protected species.

25. The Council's Ecologist has raised a number of concerns in respect of the submitted EA. For example:

- There is insufficient detail regarding the exact nature of the development so as to properly understand what habitat would be removed to facilitate the development and what will be retained, together with details of the proposals for the remaining habitat.
- The semi-improved grassland is classed as lowland acid grassland, which is a habitat type included under Section 7 of the Environment (Wales) Act 2016 as habitat of principal importance for the purpose of maintaining and enhancing biodiversity. In accordance with the Act, regard must be had to Section 7 habitats with specific recommendations included in the report regarding appropriate avoidance, minimisation, mitigation, compensation, and enhancement measures for this important habitat type. A Phase 2 survey of the grassland is warranted, given the species present and the site's proximity to the Cwm Glo SSSI.
- In terms of the watercourse, or on-site stream, there are no photographs to illustrate this habitat. No assessment appears to have been made of the potential impact on the watercourse which would be crossed by the proposed access or any protection measures that would be necessary.
- The remains of the stone building within the site has not been assessed for its suitability for bats and reptiles.
- It is not clear which trees would be removed and which would remain; rather the EA only identifies three trees of interest and states that the rest of the vegetation would be cleared with no assessment of the potential impact.
- A number of surveys have not been conducted, including: (i) a bat activity survey to rule out roosting bats; or (ii) a dormice, water vole, reptile or Marsh Fritillary survey given the on-site habitat and/or connectivity to other areas of suitable habitat. Consideration should have been given to hedgehogs, invertebrates, badgers and otters given habitats present.

26. I have also been provided with a copy of Natural Resources Wales' (NRW) response to the planning application, which takes issue with the proposal on the basis that insufficient information has been submitted to demonstrate that it would not be detrimental to the maintenance of the favourable conservation status of the great crested newt population or that it would not pose an unacceptable risk to the SSSI. It thus advises that further information should be provided in respect of the extent and description of the habitat suitable to support great crested newts that would be impacted by the proposed works and details of the methods proposed to reduce

⁶ The citation confirms that Cwm Glo a Glyndrys is of special interest for its extensive areas of marshy grassland, species-rich neutral grassland and acid grassland, and for the association of these habitats with others including woodland and heath. It is also of special interest for its outstandingly diverse assemblage of grassland fungi, including 32 species of waxcap *Hygrocybe* spp, making it one of the best sites in Britain.

impacts both during and post development. In respect of the SSSI, and although the EA draws attention to the presence of Marsh Fritillary here, assuming also that the fritillary will use the application site as it's larval food plant devil's-bit scabious *Succisa pratensis* occurs on site, no such survey has been carried out for the application site. It therefore follows that there is insufficient information to be able to assess the scale of impact to Marsh Fritillary meta-population that uses the SSSI. Consequently, a more detailed survey of the site and adjoining land in the appellant's ownership should be provided to establish the nature of the vegetation and clearly map the areas with potential to support Marsh Fritillary.

27. Furthermore, although NRW does not appear to take issue with the intended use of a septic tank to deal with foul drainage, it noted in its consultation response to the planning application that no details of this system and its discharge point have been provided to determine the potential impact on the SSSI. The appeal is not supported by any further information in respect of this element of the proposed development.
28. Paragraph 6.4.14 of PPW11 is clear that proposals must be carefully assessed to ensure that effects on those nature conservation interests which the designation is intended to protect are clearly understood; development should be refused where there are adverse impacts on the features for which a site has been designated.
29. In this context, I share the Council and NRW's concerns regarding the adequacy of the EA and its conclusions and that it does not robustly assess the scale of the impacts on habitats and species. I cannot therefore be satisfied, on the basis of the submitted evidence, that appropriate avoidance, minimisation, mitigation or compensation measures have been identified in respect of the same. In some instances, the EA is even silent on such measures.
30. Consequently, insufficient ecological information has been submitted to fully consider the potential impacts of the development, either directly or indirectly, on the conservation value of the SSSI in conflict with Policy EnW2, the impact on nature conservation features of the SINC in conflict with Policy EnW3 or to promote wider ecosystem resilience as required by Policy EnW1.
31. I do not dispute the appellant's claim that the proposed dwelling itself would be some distance away from the Cwm Glow a Glyndrys SSSI. Be that as it may, and based on the plan submitted by the Council showing the SSSI boundaries, the red line boundary denoting the application site adjoins the SSSI. In any event, I note the advice in PPW11 that SSSIs can be damaged by developments within or adjacent to their boundaries, and in some cases, by development some distance away⁷.
32. Whilst I also accept that the additional survey work required is time sensitive, this is not sufficient reason to disregard the need for nature conservation interests to be fully assessed at the planning application stage.

Highway safety

33. I do not disagree with the Council that the existing lane serving the site is of an insufficient width to accommodate two-way traffic, with no pedestrian segregation and limited passing places for vehicles. At my site visit I observed that the lane increases in width adjacent to the proposed access / drive serving the development as a result of an existing gated entrance to the adjacent land, as described by the Council. Given the visibility splays that can be achieved (albeit requiring vehicles to protrude into the

⁷ Paragraph 6.4.17 of PPW11

wider section of the lane) and the low levels of traffic along the lane, the Highway Authority did not object to the proposed development.

34. Nevertheless, the Council's reason for refusal relates to the layout of the development and lack of adequate turning facilities within the site, which it considers would result in drivers reversing onto the adjoining sub-standard lane, creating a traffic hazard to the detriment of highway and pedestrian safety.
35. I note the submitted drawings show that a section of the proposed driveway would accommodate a passing place and that there is a turning area to the front of the detached garage. The garage itself would accommodate two vehicles. Be that as it may, the Council is concerned that there would be insufficient room when two vehicles are parked side-by-side on the driveway / in the turning area, to enable an adequate turning facility within the site.
36. In support of the appeal, the appellant has provided tracking details to demonstrate that a suitable turning area can be achieved, albeit using the spaces inside the garage to perform the manoeuvres necessary to leave the site in a forward gear. It seems to me that this demonstrates that the size of the turning area would be restricted such that a driver would need to perform multiple and potentially difficult manoeuvres to exit the site. However, I have also taken into account the appellant's contention that the passing place could be used to turn a vehicle in the event that the turning area is occupied by parked vehicles.
37. Although the turning facilities would undoubtedly be restricted, given the steep and winding nature of the access I am not convinced that drivers would be more inclined to reverse all the way up to the top of the driveway where it meets the lane. In my view, it is far more likely that drivers would perform multiple manoeuvres in the turning area or the passing place, that is, within the site, so as to leave in a forward gear given the unfavourable reversing manoeuvre that would need to be performed in the alternative.
38. Even if I am wrong on this point, and future occupants were to be performing this reversing manoeuvre on a regular basis, I do not consider that the limited number of additional vehicular movements in the lane coupled with the additional width of the lane at the junction with the access and the low levels of traffic using the lane, would result in any serious risk to highway or pedestrian safety.
39. On balance, I do not consider that the proposal is likely to give rise to drivers reversing onto the adjoining lane, creating a traffic hazard to the detriment of highway and pedestrian safety. I do not therefore find conflict with RLDP Policy SW11, which *inter alia* requires new development to demonstrate that any traffic movements will not have an unacceptable impact on highway safety.

Other Matters

40. The appellant has cited two appeal decisions which allowed new residential development in the open countryside⁸. However, from my reading of these decisions, it would appear that the nature of those developments differed from that which is before me; the 2003 decision relates to an application made under s73 of the Act for a variation of a condition attached to a previous planning permission whereas the 2020 decision was in respect of a site which adjoined the settlement boundary where LDP Policy AW 2 applied. In their final comments, the appellant makes reference to a

⁸ Appeal Refs APP/U6925/A/03/1136643 and APP/L6940/A/20/3246396.

further appeal decision for the development of three houses outside the settlement and in a green wedge. I have not been provided with the full details of this case nor do I know the circumstances which resulted in planning permission being granted. In any event, each proposal must be considered on its own merits.

Conclusion

41. For the reasons I have given, and having regard to all other matters raised, I conclude that the appeal should be dismissed.
42. 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.

Melissa Hall

INSPECTOR



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Feedback, Complaints and Challenges Planning Inspectorate

June 2017

1. Feedback

1.1. We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us.

1.2. We appreciate that many of our customers will not be experts on the planning system and for some it will be their one and only experience of it. We consider that your opinions are important and realise that they may be strongly-held.

1.3. All correspondence we receive after the appeal decision is issued is handled by the Quality Team which ensures that all comments are considered and complaints are investigated thoroughly and impartially. We will reply as soon as possible in clear, straightforward language, avoiding jargon and complicated legal terms. It should be noted that correspondence received without sufficient contact information may not be responded to. It is therefore prudent to ensure that you provide the Inspectorate with a name and contact details when providing your feedback.

1.4. You can contact us in any of the ways below.

- You can get in touch on 0303 444 5940 if you want to make your complaint over the phone.
- You can e-mail us at wales@planninginspectorate.gov.uk
- You can write a letter to us at the following address:
The Planning Inspectorate
Room 1-004
Crown Buildings
Cathays Park
Cardiff
CF31 3NQ

Whilst we are happy to talk to people on the phone, where there are a number of issues to relay you may find it easier to put these in writing setting out the points clearly. We will acknowledge your correspondence, advise you who is dealing with it and provide you with a timescale for replying. We aim to reply to 80% of all correspondence within 20 working days.

Appeal “Allowed” or “Dismissed”

1.5. In planning appeals (under section 78 of the Town and Country Planning Act 1990) ‘Allowed’ means that planning permission has been granted, ‘Dismissed’ means that it has not. In enforcement appeals (under section.174), ‘Upheld’ means that the Inspector has rejected the grounds of appeal and the enforcement notice must be complied with; ‘Quashed’ means that the Inspector has agreed with the grounds of appeal and cancelled the enforcement notice.

Inspection of appeal documents

1.6. All appeal documents for the majority of Welsh appeals are published to the Appeals Casework Portal¹ during the life of an appeal, and remain on-line post-decision, for between 4 and 6 weeks.

1.7. We normally keep paper copies of appeal files for 12 weeks after the decision is issued, after which they are destroyed. We retain a full electronic copy of an appeal for 12 months. You can inspect appeal documents for appeals made in Wales at our Cardiff office, by contacting us to make an appointment (see 'Contacting us' below). Appeals made in England can be viewed at our Bristol office. Alternatively, if visiting Bristol or Cardiff would involve a long or difficult journey it may be more convenient for you to arrange to view your local planning authority's copy of the file, which should be similar to ours.

2. Administrative Complaints

2.1 There may be occasions in which you feel there has been an administrative error during the handling of an appeal and you may well feel the need to complain to us.

How we investigate administrative complaints

2.2. We will acknowledge your complaint upon receipt and move onto investigating any issues raised.

2.3. Complaints regarding any administrative issues are independently investigated by a member of our management team. They are done so impartially and never within the team concerned. Where necessary we will speak to the member of staff concerned.

2.4. Once the investigation is complete we will issue a full response.

What we will do if we have made a mistake

2.5. If, upon completion of an investigation, it is apparent that we have made a mistake then first and foremost we will apologise, we will then take the necessary steps to correct this. Further to which, we will seek for any parties adversely effected to be returned to the position they were in prior to the mistake being made.

2.6. It should be noted that should an administrative error be highlighted after the close of the appeal we will not be able to rectify the error, however you may be entitled to make an ex-gratia claim.

3. Complaints about Appeal Decisions

3.1. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an

¹ <https://acp.planningportal.gov.uk>

appeal. This often leads to a complaint, either about the decision or the way the appeal was handled.

How we investigate post-decision complaints

3.2. It is the job of the Quality Assurance Team to investigate complaints about procedure, decisions or an Inspector's conduct. Inspectors have no further direct involvement in the case once their decision is issued.

3.3. To help with our investigations we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

3.4. Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes the appellant, the local planning authority or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-open an appeal to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

3.5. Once our investigations are complete, we will send a full reply comprehensively responding to all substantive points raised.

3.6. If you consider that our reply has not adequately responded to your concerns, our policy is that a senior manager will review your complaint and send a final reply.

3.7. Sometimes a complaint is not one we can deal with (for example, complaints about how the local planning authority dealt with another similar application), in which case we will explain this and suggest who may be able to deal with the complaint instead.

3.8. Similarly we cannot resolve any issues you may have with the local planning authority about the planning system or the implementation of a planning permission.

3.9. If planning permission is granted, either by the local planning authority at application stage or by the Inspector on appeal, the local planning authority have the sole responsibility for monitoring the implementation of the permission and ensuring that it is in accordance with the plans and any conditions. The Planning Inspectorate does not have this role.

3.10. If the local planning authority considers that the development does not comply with the permission they have power to take enforcement action.

What we will do if we have made a mistake

3.11. Although we aim to give the best service possible, there will unfortunately be times when things go wrong and we fail to achieve the high standards we set ourselves. If a mistake has been made we will write to you explaining what has

happened and offer our apologies. The Inspector or administrative support staff and their line manager will be told that the complaint has been upheld and we will look to see if lessons can be learned from the mistake, such as whether our procedures can be improved or training given, so that similar errors can be avoided in future.

Taking your complaint further

3.12. If we do not succeed in resolving your complaint, you may complain to the Public Services Ombudsman for Wales. The Ombudsman is independent of all government bodies and can look into your complaint if you believe that you personally, or the person on whose behalf you are complaining:

- have been treated unfairly or received a bad service through some failure on the part of the body providing it
- have been disadvantaged personally by a service failure or have been treated unfairly.

2.13. Normally the Ombudsman will not investigate a complaint if there is a legal route you can follow to challenge a decision. The Ombudsman cannot consider the merits of Inspector's appeal decisions, which can only be challenged through the courts (see section 3 for further details).

3.14. The Ombudsman expects you to bring your concerns to our attention first and to give us a chance to put things right. You can contact the Ombudsman by:

- phone: 0300 790 0203
- e-mail: ask@ombudsman-wales.org.uk
- the website: <http://www.ombudsman-wales.org.uk>
- writing to: Public Services Ombudsman for Wales 1
Ffordd yr Hen Gae, Pencoed CF35 5LJ

3.15. In England if you decide to go to the Ombudsman you must do so through an MP.

Correction of minor errors

3.16. Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued.

3.17. In certain circumstances we are able to make minor changes to the decision under what is known as the 'Slip Rule'. This normally relates to minor errors in the decision such as typing mistakes or minor factual errors that do not affect the reasoning in the decision. For further information please see guidance note 'Correction of Errors under Section 56 of the Planning and Compulsory Purchase Act 2004'.

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What we cannot change

3.18. We **cannot change the Inspector's decision**, or re-open the appeal once the decision has been issued.

3.19. Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision or change the decision reached even if we acknowledge that an error has occurred. This can only be done following a successful High Court challenge (see 'Challenging decisions in the High Court' – below) resulting in the quashing of the original Inspector's decision.

Learning Lessons

3.20. We take your concerns and complaints seriously and try to learn from any mistakes we've made. Complaints and our responses to them are therefore one way of helping us improve the appeals system.

3.21. The Planning Inspectorate's Quality and Professional Standards Committee reviews a report of all justified complaints quarterly as well as details of judicial reviews, High Court challenges and Ombudsman complaints. The Chair of the Committee provides a report to the Planning Inspectorate Board after each meeting, and provides the Inspectorate's Chief Executive and the Board with an Annual Report.

Putting things right

3.22. Where maladministration or an error by the Planning Inspectorate has led to injustice or hardship, we will try to offer a remedy that returns the complainant to the position they would have been in otherwise. If that is not possible, the Planning Inspectorate will provide compensation for unnecessary expense incurred as a result of an acknowledged error where there are compelling reasons to do so.

3.23. The Planning Inspectorate will consider carefully complaints and requests for financial compensation received within 6 months of the date of the error or of any subsequent appeal decision by us related to that error.

3.24. Remedies which may be offered include:

- an apology, explanation, and acknowledgement of responsibility;
- remedial action, which may include reviewing service standards;
- revising published material; revising procedures to prevent the same thing happening again; training or supervising staff; or any combination of these;
- financial compensation for costs incurred as a result of our error.

Frequently asked questions

3.25. *"Why did an appeal succeed when local residents were all against it?"* – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds on all of the evidence whether these views justify refusing planning permission.

3.26. *"How can Inspectors know about local feeling or issues if they don't live in the area?"* – Using Inspectors who do not live locally ensures that they have no

personal interest in any local issues or any ties with the appellant or their agent, the local planning authority or its policies.

However, Inspectors will be aware of policies and local views from the representations people have made on the appeal.

3.27. *“I wrote to you with my views, why didn’t the Inspector mention this?”* – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every piece of evidence.

3.28. *“Why did my appeal fail when similar appeals nearby succeeded?”*

– Although two cases may be similar, there will nearly always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits having in mind the particular evidence produced by the parties on that case (which is likely to differ from case to case).

3.29. *“I’ve just lost my appeal, is there anything else I can do to get my permission?”* – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can make a revised application to the local planning authority. Talking to a planning officer about this might help you explore your options.

3.30. *“What can I do if someone is ignoring a planning condition?”* – The Planning Inspectorate cannot intervene as it is the local planning authority’s responsibility to ensure conditions are complied with. You should therefore contact the local planning authority as it has discretionary powers to take enforcement action if a condition is being ignored.

4. Challenging a decision in the High Court

4.1. **Important Note** - This Note is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person, such as a solicitor, if you intend to proceed or are unsure about any of the guidance in this Note. Further information is available from the Administrative Court (see paragraph 3.14).

4.2. High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly.

4.3. **If you want to challenge a decision in the High Court the challenge must be made:**

- for planning appeals within 42 days (6 weeks) of the date the decision was issued – this period cannot be extended;
- in most enforcement appeals, within 28 days of the date the decision was issued, although the Courts can extend this period if they consider there is good reason to do so.

4.4. Please see our separate advice notes about challenging other types of decisions, such as those relating to Rights of Way orders.

Grounds for challenging the decision

4.5. A decision cannot be challenged merely because someone disagrees with the Inspector's decision. For a challenge to be successful you would have to satisfy the High Court that the Inspector made an error in law, e.g. misinterpreting or misapplying a policy or failing to take account of an important consideration. If a mistake has been made and the High Court considers it might have affected the outcome of the appeal it will quash the Inspector's decision and return the appeal to the Planning Inspectorate for re-determination.

Challenges to planning appeal decisions

4.6. These are normally applications under section 288 of the Town & Country Planning Act 1990 to quash decisions on appeals for planning permission (including enforcement appeals allowed under ground (a) or lawful development certificate appeal decisions). For listed building or conservation area consent appeal decisions challenges are made under section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

Challenges to enforcement appeal decisions

4.7. Enforcement appeal decisions under all grounds can be challenged under section 289 of the Town & Country Planning Act 1990. For listed building or conservation area enforcement appeal decisions challenges are made under section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under section 289 or section 65 you must first get the permission of the Court. If the Court does not consider that there is an arguable case, it can refuse permission.

Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.

Frequently asked questions

4.8. *"Who can make a challenge?"* – In planning cases, anyone aggrieved by the decision may do so. This can include interested persons as well as appellants and local planning authorities. In enforcement cases, a challenge can only be made by the appellant, the local planning authority or any other person with a legal interest in the land. Other aggrieved people may apply for judicial review by the Courts but they must do this promptly (the Administrative Court can tell you more about how to do this – see 'Further information' below).

4.9. *"How much is it likely to cost me?"* - An administrative charge is made by the Court for processing your challenge (the Administrative Court should be able

to give you advice on current fees – see Further information below). The legal costs involved in preparing and presenting your case in Court can be considerable, and if the challenge fails you will usually have to pay the Planning Inspectorate's costs as well as your own.

However, if the challenge is successful the Planning Inspectorate will normally be required to meet your reasonable legal costs.

4.10. *"How long will it take?"* - This can vary considerably. Many challenges are decided within 6 months, some can take longer.

4.11. *"Do I need to get legal advice?"* - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by the Planning Inspectorate's legal representative.

4.12. *"Will a successful challenge reverse the decision?"* – Not necessarily. The Court can only require the Planning Inspectorate to reconsider the case and an Inspector may come to the same decision but for different or expanded reasons.

4.13. *"What can I do if my challenge fails?"* - Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Further information

4.14. Further advice about making a High Court challenge **in Wales** can be obtained from:

Administrative Court at Cardiff Civil Justice Centre
2 Park Street
Cardiff CF10 1ET

Phone: **02920 376 400**

Website: <http://www.justice.gov.uk/about/hmcts/>

Re-determination following a successful challenge

4.15. Where a challenge is successful, the appeal will be returned to the Planning Inspectorate for re-determination. We will give all High Court redetermination cases priority status, and they will normally be dealt with quickly, though without prejudicing any party. The Planning Inspectorate will usually appoint a different Inspector to re-determine the appeal.

4.16. The appeal will usually be decided by either further written representations or an inquiry. We will rarely arrange a hearing even if the original appeal was dealt with this way. We consider that a hearing decision that has been examined and quashed in the formal setting of the High Court would normally need to be re-determined under the formal inquiry procedure, in order to allow a full examination of the legal issues raised. However, where all parties agree that a hearing would be appropriate we will take this into account when determining the procedure for the re-determined appeal.

4.17. Where the appeal was originally dealt with by written representations, we would normally re-determine it by means of further written representations. However, where there has been a material change in circumstances we may consider this is no longer the most appropriate procedure.

4.18. Where the appeal was originally dealt with by an inquiry, a new one may be held. Where there have been significant changes in circumstances (e.g. new legislation or local or national policies) since the original inquiry or hearing the Inspector would normally allow the submission of further evidence to address these.

Timetable

4.19. For re-determined appeals where the inquiry is expected to last 8 days or more, the Planning Inspectorate would usually agree a bespoke timetable with the main parties to cover the dates of the inquiry, the submission of evidence and the issue of the decision or submission of the report to the Welsh Ministers, if applicable.

4.20. In other cases we would normally seek to agree dates for an inquiry or hearing in accordance with our standard practice. Where the re-determined case is proceeding by written representations we would normally contact the parties to make arrangements for a further visit, unless it has been agreed that a further visit is unnecessary.

5. Contacting Us

5.1. The Planning Inspectorate Wales

The Planning Inspectorate
Room 1-004
Crown Buildings
Cathays Park
Cardiff
CF1 3NQ

Phone: 0303 444 5940

E-mail: Wales@planninginspectorate.gov.uk

Website: <http://gov.wales/topics/planning/appeals/feedback-and-complaints/?lang=en>

5.2. Public Services Ombudsman for Wales

Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae
Pencoed
CF35 5LJ

Helpline: 0300 790 0203

Website: <http://www.ombudsman-wales.org.uk/>

Email: <mailto:ask@ombudsman-wales.org.uk>



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Adborth, Cŵynion a Heriai yng Nghymru



1. Adborth

1.1. Ymdrechwn yn galed i sicrhau bod pawb sy'n defnyddio'r system apeliadau'n fodlon ar y gwasanaeth a ddarparwn iddynt.

1.2. Sylweddolwn na fydd llawer o'n cwsmeriaid yn arbenigwyr ar y system gynllunio ac mai hwn fydd unig brofiad rhai pobl ohoni. Derbyniwn fod eich safbwyntiau'n bwysig a sylweddolwn y gallent gael eu harddel yn gryf.

1.3. Mae'r holl ohebiaeth a dderbyniwn ar ôl i'r penderfyniad apêl gael ei gyflwyno yn cael ei thrin gan y Tîm Ansawdd, sy'n sicrhau bod yr holl sylwadau'n cael eu hystyried a chwynion yn cael eu hymchwilio'n drylwyr ac yn ddiuedd. Byddwn yn ymateb cyn gynted â phosibl mewn iaith syml ac eglur, gan osgoi jargon a thermau cyfreithiol cymhleth. Mae'n bosibl na fyddwn yn ymateb i ohebiaeth a dderbyniwyd nad yw'n cynnwys digon o wybodaeth gyswllt. Felly, mae'n ddoeth sicrhau eich bod yn rhoi enw a manylion cyswllt i'r Arolygiaeth wrth gyflwyno'ch adborth.

1.4. Gallwch gysylltu â ni trwy unrhyw un o'r ffyrdd isod.

- Gallwch ffonio 0303 444 5940 os ydych eisiau cwyno dros y ffôn.
- Gallwch anfon neges e-bost atom ar
cymru@planninginspectorate.gov.uk
- Gallwch ysgrifennu llythyr atom yn y cyfeiriad canlynol:
Yr Arolygiaeth Gynllunio
Ystafell 1-004
Adeiladau'r Goron
Parc Cathays
Caerdydd
CF31 3NQ

Er y byddwn yn falch o siarad â phobl ar y ffôn, os bydd angen i ni gyfleu nifer o faterion i chi, mae'n bosibl y bydd yn haws eu hegluro'n ysgrifenedig. Byddwn yn cydnabod eich gohebiaeth, yn rhoi gwybod i chi pwy sy'n ymdrin â'r mater ac yn rhoi syniad i chi pryd y gallwch ddisgwyl ymateb. Ceisiwn ymateb i 80% o'r holl ohebiaeth o fewn 20 niwrnod gwaith.

Apêl "Wedi'i Chaniatáu" neu "Wedi'i Gwrthod"

1.5. O ran apeliadau cynllunio (o dan adran 78 Deddf Cynllunio Gwlad a Thref 1990), mae 'Wedi'i Chaniatáu' yn golygu bod caniatâd cynllunio wedi'i roi, ac mae 'Wedi'i Gwrthod' yn golygu nad yw caniatâd cynllunio wedi'i roi. O ran apeliadau gorfodi (o dan adran 174), mae 'Wedi'i Chynnal' yn golygu bod yr Arolygydd wedi gwrthod seiliau'r apêl a bod rhaid cydymffurfio â'r hysbysiad gorfodi; mae 'Wedi'i Dileu' yn golygu bod

[Dychwelyd i'r dudalen gynnwys](#) ANN19-1

yr Arolygydd wedi cytuno â seiliau'r apêl ac wedi canslo'r hysbysiad gorfodi.

Archwilio dogfennau apêl

1.6. Mae'r holl ddogfennau apêl ar gyfer mwyafrif yr apeliadau yng Nghymru yn cael eu cyhoeddi ar y Porth Gwaith Achos Apeliadau¹ tra bydd apêl ar waith, a byddant yn parhau ar-lein rhwng 4 a 6 wythnos ar ôl i'r penderfyniad gael ei wneud.

1.7. Fel arfer, rydym ni'n cadw copïau papur o ffeiliau apêl am 12 wythnos ar ôl i'r penderfyniad gael ei gyhoeddi, ac wedyn byddwn yn eu dinistrio. Rydym yn cadw copi electronig llawn o apêl am 12 mis. Gallwch archwilio dogfennau apêl ar gyfer apeliadau a wnaed yng Nghymru yn ein swyddfa yng Nghaerdydd, trwy gysylltu â ni i drefnu apwyntiad (gweler 'Cysylltu â ni' isod). Gellir gweld apeliadau a wnaed yn Lloegr yn ein swyddfa ym Mryste. Fel arall, pe byddai ymweld â Bryste neu Gaerdydd yn golygu taith hir neu anodd, fe allai fod yn fwy cyfleus i chi drefnu gweld copi eich awdurdod cynllunio lleol o'r ffeil, a ddylai fod yn debyg i'n ffeil ni.

2. Cwynion Gweinyddol

2.1. Weithiau, mae'n bosibl y credwch y bu gwall gweinyddol wrth ymdrin ag apêl, ac fe allech ddymuno cwyno wrthym.

Sut rydym yn ymchwilio i gwynion gweinyddol

2.2. Byddwn yn cydnabod eich cwyn ar ôl ei derbyn ac yn symud ymlaen i ymchwilio i unrhyw faterion a godwyd.

2.3. Bydd cwynion ynglŷn ag unrhyw faterion gweinyddol yn cael eu hymchwilio'n annibynnol gan aelod o'n tîm rheoli. Gwneir hyn yn ddiduedd a byth o fewn y tîm dan sylw. Byddwn yn siarad â'r aelod o staff dan sylw lle y bo'r angen.

2.4. Pan fydd yr ymchwiliad wedi'i gwblhau, byddwn yn cyhoeddi ymateb llawn.

Yr hyn y byddwn yn ei wneud os ydym wedi gwneud camgymeriad

2.5. Os yw'n amlwg, ar ôl cwblhau ymchwiliad, ein bod ni wedi gwneud camgymeriad, byddwn yn ymddiheuro yn y lle cyntaf ac yna'n cymryd y camau angenrheidiol i'w gywiro. Wedi hynny, byddwn yn ceisio sicrhau bod unrhyw bartïon yr effeithiwyd arnynt yn niweidiol yn cael eu dychwelyd i'r sefyllfa yr oeddent ynddi cyn i'r camgymeriad gael ei wneud.

2.6. Os daw gwall gweinyddol i'r amlwg ar ôl i'r apêl ddod i ben, ni fyddwn yn gallu cywiro'r camgymeriad, ond mae'n bosibl y gallwch wneud hawliad ex-gratia.

3. Cwynion ynglŷn â Phenderfyniadau Apêl

¹ <https://acp.planningportal.gov.uk>

3.1. Mae apeliadau cynllunio'n ysgogi teimladau cryf yn aml, ac mae'n anochel y bydd o leiaf un parti'n siomedig â chanlyniad apêl. Bydd hyn yn arwain at gŵyn yn fynych, naill ai ynglŷn â'r penderfyniad neu'r ffordd yr ymdriniwyd â'r apêl.

Sut rydym yn ymchwilio i gwynion ar ôl penderfyniad

3.2. Y Tîm Sicrhau Ansawdd sy'n gyfrifol am ymchwilio i gwynion ynglŷn â'r weithdrefn, penderfyniadau neu ymddygiad Arolygydd. Ni fydd Arolygwyr yn ymwneud â'r achos yn uniongyrchol ar ôl i'w penderfyniad gael ei gyhoeddi.

3.3. Er mwyn cynorthwyo â'n hymchwiliadau, mae'n bosibl y bydd angen i ni ofyn i'r Arolygydd neu aelodau eraill o staff am sylwadau. Bydd hyn yn ein helpu i gael darlun mor gyflawn â phosibl fel y gallwn fod mewn sefyllfa well i benderfynu p'un a wnaed camgymeriad. Os yw hyn yn debygol o oedi ein hadroddiad llawn, byddwn yn rhoi gwybod i chi'n gyflym.

3.4. Weithiau, mae cwynion yn codi o ganlyniad i gamddealltwriaeth ynglŷn â sut mae'r system apeliadau'n gweithio. Pan fydd hyn yn digwydd, ceisiwn esbonio pethau mor eglur â phosibl. Weithiau, bydd yr apelydd, yr awdurdod cynllunio lleol neu breswylwr lleol yn ei chael hi'n anodd derbyn penderfyniad oherwydd ei fod yn anghytuno ag ef yn unig. Er na allwn ailagor apêl i ailystyried ei nodweddion neu ychwanegu at yr hyn y mae'r Arolygydd wedi'i ddweud, byddwn yn ateb unrhyw ymholiadau ynglŷn â'r penderfyniad i'r graddau llawnaf y gallwn.

3.5. Pan fydd ein hymchwiliadau wedi'u cwblhau, byddwn yn anfon ymateb llawn sy'n ymdrin yn gynhwysfawr â'r holl bwyntiau perthnasol a godwyd.

3.6. Os ydych o'r farn nad ydym wedi ymateb yn ddigonol i'ch pryderon, bydd uwch reolwr yn adolygu eich cwyn ac yn anfon ymateb terfynol, yn unol â'n polisi.

3.7. Weithiau, ni fyddwn yn gallu ymdrin â chŵyn benodol (er enghraifft, cwynion ynglŷn â sut yr ymdriniodd yr awdurdod cynllunio lleol â chais tebyg). Yn yr achos hwn, byddwn yn esbonio'r sefyllfa ac yn awgrymu pwy allai ymdrin â'r gŵyn yn ein lle.

3.8. Yn yr un modd, ni allwn ddatrys unrhyw faterion sy'n bodoli rhyngoch chi a'r awdurdod cynllunio lleol ynglŷn â'r system gynllunio neu weithredu caniatâd cynllunio.

3.9. Os rhoddir caniatâd cynllunio, naill ai gan yr awdurdod cynllunio lleol yn ystod y cam ymgeisio neu gan yr Arolygydd trwy apêl, yr awdurdod cynllunio lleol yn unig sy'n gyfrifol am fonitro bod y caniatâd yn cael ei weithredu a sicrhau ei fod yn cydymffurfio â'r cynlluniau ac unrhyw amodau. Nid rôl yr Arolygiaeth Gynllunio yw hyn.

3.10. Os yw'r awdurdod cynllunio lleol o'r farn nad yw'r datblygiad yn cydymffurfio â'r caniatâd, mae ganddo'r grym i gymryd camau gorfodi.

Yr hyn y byddwn yn ei wneud os ydym wedi gwneud camgymeriad

3.11. Er y ceisiwn ddarparu'r gwasanaeth gorau posibl, weithiau bydd pethau'n mynd o'i le, yn anffodus, ac ni fyddwn yn cyflawni'r safonau uchel yr ydym wedi'u gosod i'n hunain. Os gwnaed camgymeriad, byddwn yn ysgrifennu atoch i esbonio beth sydd wedi digwydd ac yn ymddiheuro. Bydd yr Arolygydd neu'r staff cymorth gweinyddol a'u rheolwr llinell yn cael gwybod bod y gŵyn wedi cael ei chynnal a byddwn yn edrych i weld a ellir dysgu gwersi o'r camgymeriad, er enghraifft, p'un a ellir gwella ein gweithdrefnau neu roi hyfforddiant, fel y gellir osgoi camgymeriadau tebyg yn y dyfodol.

Mynd â'ch cwyn ymhellach

3.12. Os na lwyddwn ddatrys eich cwyn, cewch fynd â hi i Ombwdsmon Gwasanaethau Cyhoeddus Cymru. Mae'r Ombwdsmon yn annibynnol ar holl gyrff y llywodraeth ac yn gallu ymchwilio i'ch cwyn os ydych yn credu eich bod chi eich hun, neu'r sawl yr ydych yn cwyno ar ei ran:

- wedi cael eich trin yn annheg neu wedi derbyn gwasanaeth gwael trwy ryw fethiant ar ran y corff a oedd yn ei ddarparu
- wedi cael eich rhoi dan anfantais yn bersonol o ganlyniad i fethiant gwasanaeth neu wedi cael eich trin yn annheg.

2.13. Fel arfer, ni fydd yr Ombwdsmon yn ymchwilio i gŵyn os oes llwybr cyfreithiol ar gael i chi herio penderfyniad. Ni all yr Ombwdsmon ystyried nodweddion penderfyniadau apêl Arolygydd, y gellir eu herio trwy'r llysoedd yn unig (gweler adran 3 am fwy o fanylion).

3.14. Mae'r Ombwdsmon yn disgwyl i chi gyflwyno'ch cwyn i ni yn gyntaf a rhoi cyfle i ni unioni'r sefyllfa. Gallwch gysylltu â'r Ombwdsmon trwy'r canlynol:

- ffôn: 0300 790 0203
- e-bost: ask@ombudsman-wales.org.uk
- gwefan: <http://www.ombudsman-wales.org.uk>
- ysgrifennu at: Ombwdsmon Gwasanaethau Cyhoeddus Cymru 1
Ffordd yr Hen Gae, Pencoed CF35 5LJ

3.15. Yn Lloegr, os penderfynwch fynd at yr Ombwdsmon, mae'n rhaid i chi wneud hynny trwy Aelod Seneddol.

Cywiro mân wallau

3.16. Dogfennau cyfreithiol yw penderfyniadau apêl ac, ar wahân i lithriadau bach iawn, ni allwn eu diwygio na'u newid ar ôl iddynt gael eu cyhoeddi.

3.17. Mewn rhai amgylchiadau, gallwn wneud mân newidiadau i'r penderfyniad o dan yr hyn a elwir yn 'Rheol Lithriad'. Mae hyn yn ymwneud fel arfer â mân wallau yn y penderfyniad fel camgymeriadau teipio neu fân wallau ffeithiol nad ydynt yn effeithio ar y rhesymu yn y penderfyniad. Mae mwy o wybodaeth ar gael yn y nodyn canllaw 'Cywiro Gwallau o dan Adran 56 Deddf Cynllunio a Phrynu Gorfodol 2004'.

Yr hyn na allwn ei newid

3.18. **Ni allwn newid penderfyniad yr Arolygydd**, nac ailagor yr apêl ar ôl i'r penderfyniad gael ei gyhoeddi.

3.19. Er y gallwn gywiro mân lithriadau, ni allwn ailystyried y dystiolaeth a archwiliodd yr Arolygydd na'r rhesymu yn y penderfyniad na newid y penderfyniad a wnaed, hyd yn oed os cydnabyddwn fod camgymeriad wedi digwydd. Yr unig ffordd y gellir gwneud hyn yw trwy her lwyddiannus yn yr Uchel Lys (gweler 'Herio penderfyniadau yn yr Uchel Lys' – isod), sy'n dileu penderfyniad gwreiddiol yr Arolygydd.

Dysgu Gwersi

3.20. Rydym ni'n ystyried eich pryderon a'ch cwynion o ddifrif ac yn ceisio dysgu o unrhyw gamgymeriadau yr ydym wedi'u gwneud. Felly, mae cwynion, a'n hymatebion iddynt, yn un ffordd o'n helpu ni i wella'r system apeliadau.

3.21. Mae Pwyllgor Ansawdd a Safonau Proffesiynol yr Arolygiaeth Gynllunio yn ystyried adroddiad ar yr holl gwynion a gyfiawnhawyd bob tri mis, yn ogystal â manylion adolygiadau barnwrol, heriau Uchel Lys a chwynion Ombwdsmon. Mae Cadeirydd y Pwyllgor yn rhoi adroddiad i Fwrdd yr Arolygiaeth Gynllunio ar ôl pob cyfarfod, ac yn rhoi Adroddiad Blynyddol i Brif Weithredwr a Bwrdd yr Arolygiaeth.

Unioni pethau

3.22. Pan fydd camweinyddu neu gamgymeriad gan yr Arolygiaeth Gynllunio wedi arwain at anghyfiawnder neu galedi, ceisiwn gynnig rhwymedi sy'n dychwelyd yr achwynydd i'r sefyllfa y byddai wedi bod ynddi fel arall. Os nad yw hynny'n bosibl, bydd yr Arolygiaeth Gynllunio yn rhoi iawndal am dreuliau diangen a gafwyd o ganlyniad i gamgymeriad a gydnabuwyd, lle mae rhesymau cymhellol dros wneud hynny.

3.23. Bydd yr Arolygiaeth Gynllunio yn rhoi ystyriaeth ofalus i gwynion a cheisiadau am iawndal ariannol a dderbynnir o fewn 6 mis o ddyddiad y camgymeriad neu unrhyw benderfyniad apêl dilynol gennym sy'n gysylltiedig â'r camgymeriad hwnnw.

3.24. Mae'r rhwymedïau y gellid eu cynnig yn cynnwys:

- ymddiheuro, esbonio, a chydabod cyfrifoldeb;
- camau unioni, a allai gynnwys adolygu safonau gwasanaeth;

- diwygio deunydd cyhoeddedig; diwygio gweithdrefnau er mwyn atal yr un peth rhag digwydd eto; hyfforddi neu oruchwylio staff; neu unrhyw gyfuniad o'r rhain;
- iawndal ariannol am gostau a gafwyd o ganlyniad i'n camgymeriad.

Cwestiynau cyffredin

3.25. *“Pam llwyddodd apêl er bod yr holl breswylwyr lleol yn ei herbyn?”* – Mae safbwyntiau lleol yn bwysig, ond maent yn debygol o fod yn fwy darbwyllog os ydynt wedi'u seilio ar resymau cynllunio, yn hytrach nag yn mynegi barn o blaid neu yn erbyn y cynnig yn syml. Mae'n rhaid i Arolygwyr benderfynu ar sail yr holl dystiolaeth, p'un a yw'r safbwyntiau hyn yn cyfiawnhau gwrthod rhoi caniatâd cynllunio.

3.26. *“Sut gall Arolygwyr wybod am deimladau neu faterion lleol os nad ydyn nhw'n byw yn yr ardal?”* – Mae defnyddio Arolygwyr nad ydynt yn byw yn lleol yn sicrhau nad oes ganddynt fuddiant personol mewn unrhyw faterion lleol nac unrhyw gysylltiadau â'r apelydd neu ei asiant, yr awdurdod cynllunio lleol na'i bolisiâu. Fodd bynnag, bydd Arolygwyr yn ymwybodol o bolisiâu a safbwyntiau lleol o'r cynrychiolaethau y mae pobl wedi'u cyflwyno ynglŷn â'r apêl.

3.27. *“Ysgrifennais atoch i fynegi fy safbwyntiau, felly pam na soniodd yr Arolygydd am hyn?”* – Mae'n rhaid i Arolygwyr roi rhesymau dros eu penderfyniad ac ystyried yr holl safbwyntiau a gyflwynwyd, ond nid oes angen rhestru pob darn o dystiolaeth.

3.28. *“Pam fethodd fy apêl er bod apeliadau tebyg gerllaw wedi llwyddo?”* – Er y gallai dau achos fod yn debyg, bydd rhyw agwedd ar gynnig sy'n unigryw bron bob tro. Mae'n rhaid penderfynu ar bob achos ar sail ei nodweddion penodol ei hun, gan ystyried y dystiolaeth a gynhyrchwyd gan y partïon i'r achos hwnnw (sy'n debygol o fod yn wahanol o achos i achos).

3.29. *“Rwyf newydd golli fy apêl. A oes unrhyw beth arall y gallaf ei wneud i gael y caniatâd?”* – Efallai y gallech newid rhyw agwedd ar eich cynnig i'w wneud yn fwy derbyniol. Er enghraifft, os oedd yr Arolygydd yn credu y byddai eich estyniad yn edrych allan o'i le, a ellid ei ailddylunio i gyd-fynd yn well â'i amgylchoedd? Os felly, gallwch gyflwyno cais diwygiedig i'r awdurdod cynllunio lleol. Gallai trafod hyn gyda swyddog cynllunio eich helpu i archwilio'r dewisiadau sydd ar gael i chi.

3.30. *“Beth allaf ei wneud os yw rhywun yn anwybyddu amod cynllunio?”* – Ni all yr Arolygiaeth Gynllunio ymyrryd oherwydd yr awdurdod cynllunio lleol sy'n gyfrifol am sicrhau y cydymffurfir ag amodau. Felly, dylech gysylltu â'r awdurdod cynllunio lleol oherwydd bod ganddo bwerau disgresiwn i gymryd camau gorfodi os yw amod yn cael ei anwybyddu.

4. Herio penderfyniad yn yr Uchel Lys

4.1. **Nodyn Pwysig** – Mae'r Nodyn hwn wedi'i fwriadu i roi arweiniad yn unig. Oherwydd bod heriau yn yr Uchel Lys yn gallu ymwneud ag achosion cyfreithiol cymhleth, fe allai fod yn syniad da i chi ystyried ceisio cyngor cyfreithiol gan unigolyn cymwysedig, fel cyfreithiwr, os ydych chi'n bwriadu dilyn y trywydd hwn neu'n ansicr ynghylch unrhyw ran o'r arweiniad yn y Nodyn hwn. Mae rhagor o wybodaeth ar gael gan y Llys Gweinyddol (gweler paragraff 3.14).

4.2. Mae heriau Uchel Lys yn cael eu cynnal o dan ddeddfwriaeth wahanol, yn dibynnu ar y math o apêl, ac mae'r cyfnod a ganiateir ar gyfer cyflwyno her yn amrywio yn unol â hynny.

4.3. **Os ydych chi eisiau herio penderfyniad yn yr Uchel Lys, mae'n rhaid i'r her gael ei chyflwyno:**

- o ran apeliadau cynllunio, o fewn 42 diwrnod (6 wythnos) o'r dyddiad y cyhoeddwyd y penderfyniad – ni ellir ymestyn y cyfnod hwn;
- o ran y rhan fwyaf o apeliadau gorfodi, o fewn 28 niwrnod o'r dyddiad y cyhoeddwyd y penderfyniad, er y gall y Llysoedd ymestyn y cyfnod hwn os ydynt o'r farn bod rheswm da dros wneud hynny.

4.4. Gweler ein nodiadau cyngor ar wahân ynglŷn â herio mathau eraill o benderfyniadau, fel y rhai hynny sy'n ymwneud â gorchmynion Hawliau Tramwy.

Y seiliau dros herio'r penderfyniad

4.5. Ni ellir herio penderfyniad oherwydd bod rhywun yn anghytuno â phenderfyniad yr Arolygydd yn unig. Er mwyn i her fod yn llwyddiannus, byddai'n rhaid i chi fodloni'r Uchel Lys bod yr Arolygydd wedi gwneud camgymeriad yn ôl y gyfraith, e.e. camddehongli neu gamgymhwyso polisi neu fethu â rhoi sylw i ystyriaeth bwysig. Os gwnaed camgymeriad a bod yr Uchel Lys o'r farn y gallai fod wedi effeithio ar ganlyniad yr apêl, bydd yn dileu penderfyniad yr Arolygydd ac yn dychwelyd yr apêl i'r Arolygiaeth Gynllunio i'w hailbenderfynu.

Herio penderfyniadau apêl cynllunio

4.6. Fel arfer, ceisiadau yw'r rhain o dan adran 288 Deddf Cynllunio Gwlad a Thref 1990 i ddileu penderfyniadau ar apeliadau ar gyfer caniatâd cynllunio (gan gynnwys apeliadau gorfodi a ganiatawyd o dan sail (a) neu benderfyniadau apêl tystysgrif datblygiad cyfreithlon). O ran penderfyniadau apêl caniatâd adeilad rhestredig neu ardal gadwraeth, cyflwynir heriau o dan adran 63 Deddf Cynllunio (Adeiladau Rhestredig ac Ardaloedd Cadwraeth) 1990. **Mae'n rhaid i'r Llys Gweinyddol dderbyn heriau o fewn 42 diwrnod (6 wythnos) o ddyddiad y penderfyniad – ni ellir ymestyn y cyfnod hwn.**

Herio penderfyniadau apêl gorfodi

4.7. Gellir herio penderfyniadau apêl gorfodi ar bob sail o dan adran 289 Deddf Cynllunio Gwlad a Thref 1990. O ran penderfyniadau apêl gorfodi adeilad rhestredig neu ardal gadwraeth, cyflwynir heriau o dan adran 65 Deddf Cynllunio (Adeiladau Rhestredig ac Ardaloedd Cadwraeth) 1990. Er mwyn herio penderfyniad gorfodi o dan adran 289 neu adran 65, mae'n rhaid i chi gael caniatâd y Llys yn gyntaf. Os nad yw'r Llys yn credu bod achos y gellir ei ddadlau, gall wrthod rhoi caniatâd.

Mae'n rhaid i'r Llys Gweinyddol dderbyn ceisiadau am ganiatâd i gyflwyno her o fewn 28 niwrnod o ddyddiad y penderfyniad, oni bai bod y Llys yn ymestyn y cyfnod hwn.

Cwestiynau cyffredin

4.8. *"Pwy sy'n gallu cyflwyno her?"* – O ran achosion cynllunio, gall unrhyw un sy'n teimlo iddo gael cam gan y penderfyniad wneud hynny. Gall hyn gynnwys unigolion â buddiant yn ogystal ag apelyddion ac awdurdodau cynllunio lleol. O ran achosion gorfodi, dim ond yr apelydd, yr awdurdod cynllunio lleol neu unrhyw unigolyn arall sydd â buddiant cyfreithiol yn y tir all gyflwyno her. Gall pobl eraill sy'n teimlo iddynt gael cam wneud cais am adolygiad barnwrol gan y Llysoedd, ond mae'n rhaid iddynt wneud hyn yn brydlon (gall y Llys Gweinyddol roi mwy o wybodaeth i chi am sut i wneud hyn – gweler 'Gwybodaeth ychwanegol' isod).

4.9. *"Faint mae'n debygol o'i gostio i mi?"* – Mae'r Llys yn codi tâl gweinyddol am brosesu eich her (dylai'r Llys Gweinyddol allu rhoi cyngor i chi ynglŷn â'r ffioedd presennol – gweler 'Gwybodaeth ychwanegol' isod). Gall y costau cyfreithiol sy'n gysylltiedig â pharatoi a chyflwyno'ch achos yn y Llys fod yn sylweddol, ac os bydd yr her yn methu bydd rhaid i chi dalu costau'r Arolygiaeth Gynllunio yn ogystal â'ch costau chi, fel arfer. Fodd bynnag, os bydd yr her yn llwyddiannus, bydd rhaid i'r Arolygiaeth Gynllunio dalu eich costau cyfreithiol rhesymol chi, fel arfer.

4.10. *"Pa mor hir y bydd yn ei gymryd?"* – Gall hyn amrywio'n fawr. Penderfynir ar lawer o heriau o fewn 6 mis, ond gall rhai gymryd mwy o amser.

4.11. *"A oes angen i mi gael cyngor cyfreithiol?"* – Nid oes rhaid i chi gael cynrychiolaeth gyfreithiol yn y Llys ond mae hynny'n beth arferol, oherwydd fe allai fod angen i chi ymdrin â phwyntiau cyfreithiol cymhleth a wneir gan gynrychiolydd cyfreithiol yr Arolygiaeth Gynllunio.

4.12. *"A fydd her llwyddiannus yn gwyrdroi'r penderfyniad?"* – Nid o reidrwydd. Gall y Llys fynnu bod yr Arolygiaeth Gynllunio yn ailystyried yr achos yn unig, a gallai Arolygydd ddod i'r un penderfyniad ond am resymau gwahanol neu helaethach.

4.13. *"Beth allaf ei wneud os bydd fy her yn methu?"* – Er y gallai fod yn bosibl mynd â'r achos i'r Llys Apêl, byddai'n rhaid cyflwyno dadl gymhellol i'r Llys er mwyn i farnwr roi caniatâd i chi wneud hyn.

Gwybodaeth ychwanegol

4.14. Gellir cael cyngor ychwanegol ynglŷn â chyflwyno her Uchel Lys **yng Nghymru** gan y canlynol:

Y Llys Gweinyddol yng Nghanolfan Cyfiawnder Sifil Caerdydd
2 Stryd y Parc
Caerdydd CF10 1ET

Rhif ffôn: **02920 376 400**

Gwefan: <http://www.justice.gov.uk/about/hmcts/>

Ailbenderfynu yn dilyn her lwyddiannus

4.15. Pan fydd her yn llwyddiannus, bydd yr apêl yn cael ei dychwelyd i'r Arolygiaeth Gynllunio i'w hailbenderfynu. Byddwn yn rhoi blaenoriaeth i bob achos ailbenderfynu o'r Uchel Lys, ac ymdrinnir â nhw'n gyflym fel arfer, ond heb achosi anfantais i unrhyw barti. Bydd yr Arolygiaeth Gynllunio yn penodi Arolygydd gwahanol i ailbenderfynu'r apêl, fel arfer.

4.16. Fel rheol, bydd yr apêl yn cael ei phenderfynu naill ai trwy gynrychiolaethau ysgrifenedig ychwanegol neu ymchwiliad. Anaml iawn y byddwn yn trefnu gwrandawriad, hyd yn oed os ymdriniwyd â'r apêl wreiddiol yn y modd hwnnw. Ystyriwn y byddai angen i benderfyniad gwrandawriad a archwiliwyd ac a ddilëwyd yn lleoliad ffurfiol yr Uchel Lys gael ei ailbenderfynu o dan y weithdrefn ymchwiliad ffurfiol fel arfer, er mwyn gallu archwilio'r materion cyfreithiol a godwyd yn llawn. Fodd bynnag, pe byddai'r holl bartïon yn cytuno y byddai gwrandawriad yn briodol, byddem yn ystyried hyn wrth bennu'r weithdrefn ar gyfer ailbenderfynu'r apêl.

4.17. Lle yr ymdriniwyd â'r apêl yn wreiddiol trwy gynrychiolaethau ysgrifenedig, byddem fel arfer yn ei hailbenderfynu trwy gyfrwng cynrychiolaethau ysgrifenedig ychwanegol. Fodd bynnag, lle y bu newid perthnasol mewn amgylchiadau, gallem ystyried nad hon yw'r weithdrefn fwyaf priodol mwyach.

4.18. Lle yr ymdriniwyd â'r apêl yn wreiddiol trwy ymchwiliad, gallai un newydd gael ei gynnal. Lle y bu newidiadau arwyddocaol mewn amgylchiadau (e.e. deddfwriaeth newydd neu bolisïau lleol neu genedlaethol newydd) ers yr ymchwiliad neu'r gwrandawriad gwreiddiol, byddai'r Arolygydd fel arfer yn caniatáu cyflwyno tystiolaeth ychwanegol i fynd i'r afael â'r rhain.

Amserlen

4.19. O ran apeliadau i'w hailbenderfynu, lle y disgwylir i'r ymchwiliad bara 8 niwrnod neu fwy, byddai'r Arolygiaeth Gynllunio fel arfer yn cytuno ar amserlen benodol gyda'r prif bartïon i ymdrin â dyddiadau'r ymchwiliad, cyflwyno tystiolaeth a chyhoeddi'r penderfyniad neu gyflwyno'r adroddiad i Weinidogion Cymru, os yw'n berthnasol.

4.20. Mewn achosion eraill, fel rheol, byddem yn ceisio cytuno ar ddyddiadau ar gyfer ymchwiliad neu wrandawriad yn unol â'n harferion safonol. Lle mae'r achos i'w ailbenderfynu yn symud ymlaen trwy gynrychiolaethau ysgrifenedig, byddem fel arfer yn cysylltu â'r partïon i drefnu ymweliad arall, oni bai y cytunwyd nad oes angen cynnal ymweliad arall.

5. Cysylltu â Ni

5.1. Arolygiaeth Gynllunio Cymru

Yr Arolygiaeth Gynllunio
Ystafell 1-004
Adeiladau'r Goron
Parc Cathays
Caerdydd
CF1 3NQ

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E-bost: Cymru@planninginspectorate.gov.uk
Gwefan: www.planningportal.gov.uk/planning/planninginspectorate/customerfeedback/feedback?language=wa

5.2. Ombwdsmon Gwasanaethau Cyhoeddus Cymru

Ombwdsmon Gwasanaethau Cyhoeddus Cymru
1 Ffordd yr Hen Gae
Pencoed
CF35 5LJ

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