
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 29/07/19

gan **A L McCooey BA MSc MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 05.09.2019

Appeal Decision

Site visit made on 29/07/19

by **A L McCooey BA MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 05.09.2019

Appeal Ref: APP/U6925/A/19/3229505

Site address: Land to the south of Unit 7, EFI Industrial Estate, Merthyr Tydfil, CF47 8RB

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 Darren and Mrs Karen Raynes against the decision of Merthyr Tydfil County Borough Council.
 - The application Ref P/18/0310, dated 21 August 2018, was refused by notice dated 23 November 2018.
 - The development proposed is the erection of 10 light industrial units (Use class B1) with associated access road and parking.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the Council against the appellants. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:

- The effect of the proposed development on heritage assets;
 - The effect of the increased use of the proposed access on the safety of pedestrians, cyclists and drivers using Brecon Road and the site access road; and
 - Whether sufficient information has been provided to assess the likely effects on natural heritage and biodiversity.
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Reasons

4. The site is next to a long-established industrial estate near Cyfartha Castle and Park. Access to the estate is from Brecon Road close to its junction with Gurnos Road. The access road is at an acute angle to the main road and thereafter runs downhill to the estate. The site is a level piece of land at the southern end of the estate close to the River Taff. There is a steep embankment covered in trees down to the river. The site is currently fenced off from the estate. It is narrow and widens somewhat to the east. The eastern boundary comprises a rock face around 4m high. The rear gardens of the dwellings in Pandy Close border the edge of the rock face at this point.
5. The site lies within the Cyfarthfa Conservation Area and immediately adjoins a Site of Importance for Nature Conservation (SINC). The site also lies in close proximity to the Grade II* listed building and Scheduled Ancient Monument (SAM), Pont-y-Cafnau footbridge, which crosses the river close to the boundary of the site towards Cyfarthfa Ironworks (also a SAM). A right of way extends from Brecon Road through the industrial estate linking to the Taff trail on the other side of the river from the site.
6. Relevant legislation requires that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise. The most relevant policies of the Merthyr Tydfil Local Development Plan are as follows: Policy BW6 (Townscape and built heritage) states that proposals will only be permitted where it can be demonstrated they would preserve or enhance the architectural quality, character and setting of listed buildings, SAMs and Conservation Areas. Policy BW5 (Natural heritage) aims to protect and support the enhancement of the County Borough's distinctive natural heritage. Policy AS6 (Local nature conservation designations) states that applications for development affecting Sites of Importance for Nature Conservation will not be permitted unless full account has been taken of the relevant features so as to prevent damage to their conservation value. Policy BW12 (Development proposals and transport) requires that proposals avoid causing or exacerbating highway safety problems.

The impact on heritage assets

7. Sections 16 (2) and 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require the decision maker to have special regard to the desirability of preserving the building or its setting. Planning Policy Wales (PPW) states that this is the primary material consideration for any development proposal affecting a listed building or its setting. PPW and Technical Advice Note (TAN) 24: The Historic Environment state that the conservation of archaeological remains and their settings is a material consideration. There is a presumption against proposals that would have a significant adverse impact causing harm to the setting of the remains.
8. Pont y Cafnu bridge is a nationally important SAM and Grade II* listed building. Grade II* listed buildings are particularly important buildings of more than special interest. It is believed to be the first iron bridge in the world with an unusual 3 tier design and construction. The bridge as a SAM and listed building is of high significance and has high evidential, historic and aesthetic value. The important role of the Gurnos tramway in the development of Cyfartha Ironworks and the bridge as part of that tramway is noted. The setting of a historic asset includes the surroundings in which it is understood, experienced and appreciated embracing present and past relationships to the surrounding landscape. Setting is not a historic asset in its own right but has value derived from how the different elements may contribute to the significance of a historic asset. The setting contributes to its significance and should be retained.

9. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. The Conservation Area is very large reflecting the important inter-relationships between the industrial landscape of the ironworks and its linkages to sources of raw materials and the Castle and parkland developed by the Crawshay family. The Conservation Area appraisal sets out the background, historical development and key views. It states that the Conservation Area has a high historic significance as a lasting symbol of the growth of Merthyr Tydfil and its industrial past. It is divided into four character areas and the site is within the Cyfarthfa Ironworks and Taf Fawr Valley character area, which has a high aesthetic value.
10. The scheme has been designed using Larch cladding in order to attempt to blend in with the nearby trees and assist the assimilation of the proposed buildings into the landscape. The building form and serrated roof design aims to reflect the former buildings on the ironworks site that no longer exist. I recognise the quality of the design and materials and the fact that the buildings would screen the existing industrial estate and yard area in part. The appellant argues that the surrounding vegetation and proposed hedge planting would screen the proposal so that its impact on the bridge and the Conservation Area would be slight. This view was shared by Cadw in its comments on the impact on the SAM. Cadw's comments did not relate to the Conservation Area or the bridge as a listed building. The reliance on the existing trees may be affected by the development itself. The proposed access road is close to the top of the embankment and within the crown spread of several trees. The construction of the road would necessitate either piling or a retaining wall. A letter from a structural engineering firm confirms that both options can be installed without encroachment onto the bank. It also states (and the Council's engineer agrees) that site investigation work would be necessary. In this respect I note the evidence regarding past tipped material on the embankment from the Council and NRW, which could affect the works required. No convincing information has been provided to demonstrate that the required works would not affect the existing trees. The loss of trees would reduce the screening effect, especially in winter when the trees are not in leaf. There is evidence that some trees close to the site access (outside the appeal site) have been cleared opening up views of and from the bridge.
11. It is claimed that the Council has over-estimated the importance of the site to the setting of the bridge and as part of the Conservation Area and under-estimated the benefits of the proposal in terms of the design and screening/separation of the older buildings within the industrial estate by the proposed buildings and car parking areas (retaining some openness). I do not agree. The Conservation Area was designated around the Cyfarthfa Ironworks and later Castle and parkland. The connections between the parts of the Conservation Area are important, especially the steep wooded river valleys. The site acts as a buffer between the unattractive industrial estate and the Conservation Area/ river. The proposed development would erode that buffer to the detriment of the character and appearance of the Conservation Area and the setting of the SAM and listed building (the bridge). The loss of screening would exacerbate that effect as set out above. The proposed hedge planting would be in a very restricted area between the road and the bank and under the existing tree canopy. It would be difficult to achieve, especially in the critical area close to the bridge, and even if successful would take time to mature. If it is unsuccessful conditions could require its replacement. This would increase the time taken for it to mature.

12. Part of the Cyfartha Ironworks SAM is close to the bridge on the opposite side of the river and vegetation along both banks do screen the proposal. Cadw judged the impact to be slight on the basis of the screening vegetation. However, the concerns regarding the loss of vegetation would increase the potential impact on this nationally important historic asset. The impact would remain less than that on the bridge SAM.
13. I have viewed the proposal from the grounds of Cyfartha Castle and do not consider that there would be any significant impact on the identified important views as a result of the proposal.
14. An appeal decision from 1997¹ related to a proposal for an industrial unit on land nearby (to the north of the site) was referred to by the Council. The appeal was dismissed because of the access from Brecon Road and the impact on heritage assets. Whilst this decision is 22 years old, the policy and legislative context on these two issues has not changed significantly. The conclusions reached are relevant to my consideration and I share the concerns expressed in that decision.
15. Statute and policy require the decision maker to have special regard to the desirability of preserving a listed building or its setting. For the reasons given, the proposal would have an adverse impact on the setting of Pont-y-Cafnau bridge, which is a SAM and Grade II* listed building and the Cyfartha Ironworks SAM. The statutory test requires that special attention is paid to desirability of preserving or enhancing the character or appearance of a Conservation Area in considering proposals for development. PPW states a strong presumption against the granting of planning permission for developments which damage the character or appearance of a Conservation Area. For similar reasons, the proposal would not preserve or enhance the Cyfarthfa Conservation Area but would rather have an adverse effect. These adverse impacts would not be overcome by the proposed design and materials or screening by existing and proposed vegetation. Nor would they be overcome by the claimed benefits of the proposal. Whilst this is private land and no proposals to otherwise enhance the site may come forward, the proposal must be assessed on its own merits. I conclude that the adverse impacts on heritage assets mean that the proposal would not meet the statutory tests and would be contrary to Policy BW6 and the provisions of PPW and TAN 24.

Highway Safety

16. The existing access onto Brecon Road is sub-standard in terms of its alignment and visibility. The acute angle means that entry and exit movements are difficult especially for large vehicles. There is also a right turn lane on Brecon Road at this point, which is for vehicles turning onto Gurnos Road. Vehicles entering the site access must cross this turning lane when entering from the north. Vehicles entering from the south must move out into the turning lane to do so. Similarly, vehicles exiting the site to proceed in a southerly direction face a challenging manoeuvre. Visibility is sub-standard. The appellants state it is 2.4m x 12m to the north and 2.4m x 5m to the south. The normal standard would be 2.4m x 43m for an access such as this onto a busy road.
17. Whilst not part of the proposal, the appellants have offered to improve the junction with Brecon Road by building out of the kerbline into the road. This could be addressed by the imposition of a suitable condition. It is claimed that appropriate lane widths for the existing 3 lanes can be maintained within the existing highway width. In this way visibility could be improved to 2.4m x 35m (north) and 2.4m x 12m

¹ APP/U6925/A/96/509905

(south). This would also improve the poor visibility of the access junction, but only marginally in the critical southern direction. The Council argues that narrowing of the lanes could also impact on larger vehicles using Brecon and Gurnos Roads, including buses. The difficult turning movements would not be affected and certainly would not be improved.

18. The traffic survey took place over 1 day and recorded 31 vehicle movements during the morning peak hour and 15 vehicle movements during the evening peak hour. The predicted traffic flow from the proposal was 12 vehicle movements during the morning peak hour and 7 vehicle movements during the evening peak hour². This represents increases of 39% (AM peak) and 47% (PM peak) on what is a relatively low traffic flow. The accident statistics (2015 – 2017) shows that there was only 1 accident at the junction, which it appears was unrelated to traffic using the industrial estate.
19. The Highway Authority response to the comments is interpreted by the appellant as a recognition that its concerns have been overcome. Having considered the original reply and further comments, I read them to relate to the proposed junction improvements only. The Highway officer notes that the works will improve the access, but it would still not be compliant with standards.
20. The road through the existing industrial estate is poorly surfaced and there are no pedestrian facilities or footways and hence no segregation. This has the potential to lead to highway safety concerns for pedestrians using the access route. Whilst there is pedestrian access to the west via the Taff Trail, the access road is a well-used connection from Cyfartha area to the Taff Trail. Again, traffic flows are low, but the effect on pedestrian safety from increased traffic must weigh against the proposal.
21. The appellant's case is simple. It is accepted that the access is sub-standard, but it has been in use for many years with no history of accidents. The traffic generation from the proposal would be modest. Some improvements to the junction can be made. In support of this argument reference is made to TAN 18: Transport at paragraph B11 of Annex B which states: Where planning applications are submitted within an existing development site and served by an existing substandard access, there should be scope for a limited redevelopment that incorporated a substantial access improvement, even though the improved access would still be below standard.
22. The low accident rate and proposed improvements to the junction are noted. The proposal is not a limited re-development and the relative increases in traffic using the junction would be significant. The proposed improvement to visibility is not substantial in the critical southern direction. The poor turning radii would not be improved. For these reasons I consider that paragraph B11 of TAN 18 would not justify approval of the proposal. I conclude that the access junction is so sub-standard that approval of the proposal would be detrimental to highway safety and contrary to Policy BW12. I am reinforced in this conclusion by the Inspector's comments on this issue in the earlier appeal decision referred to above.

The Likely Effects on Natural Heritage

23. Policies BW5 and AS6 complement national policy in PPW and TAN 5. The site adjoins a Site of Importance for Nature Conservation (SINC) with an area of trees on a steep embankment down to the river.

² The source of these figures is the appellants' Highway Statement

24. The restricted width of the site means that development would take place in close proximity to this embankment. The access road would be constructed along the site boundary for much of its length. No details of the actual construction of this road and how it would be supported have been decided. Two alternatives comprising retaining walls or driven piling have been put forward. Either of these could have an adverse impact on the SINC because of likely impacts on the trees in this area for the reasons set out above. No arboricultural information by a suitably qualified person has been submitted in support of the contention that these works would not affect the existing trees.
25. The Council's ecologist has also raised the issue of indirect effects on the SINC as a result of pollution and drainage, and that the stability of the embankment could be affected by previously tipped material (reported to Natural Resources Wales (NRW)). The potential impact on ecology has not been addressed despite the Council raising this issue. NRW's response relates to protected species and states that as there has been no survey or information provided, it is difficult to assess whether protected species may be present or any effect on them. NRW in raising no objection then relies on the appellants' report of a conversation with the Council's ecologist that refers to potential measures to mitigate any impacts. The consultation reply from the Council's ecologist does not support NRW's conclusions. He objects to the development on the grounds of lack of information and the potential for adverse effects on the adjoining SINC and on protected species. He states that a Preliminary Ecological Appraisal (PEA) is required, which would outline any ecological impacts due to the proposed development on both the habitats and species that may be found both onsite and those offsite, particularly any impacts on the adjacent Cwm Taf Fechan SINC and the habitats and species found therein. For example, the Council are aware that the area is frequented by bats and that signs of otter activity have been found close by.
26. I consider that the access and layout of the proposal has the potential to lead to adverse effects on nature conservation interests, trees and protected species. Insufficient information has been provided to assess these effects. These matters are important material considerations that must be addressed at this stage and cannot be left to detailed design or covered by conditions. The proposal is contrary to Policies BW5 and AS6 and national policy and guidance for these reasons.

Other matters

27. In terms of the effect on residential amenity, I agree with the conclusions reached in the Council's Committee report. The proposal would be in close proximity to the gardens of the dwellings. It is proposed to provide insulation and larch cladding, which will absorb noise at high level. The dwellings are around 4-5m higher than the site and there is some intervening vegetation. The corner unit closest to the dwellings would have a flat green roof to minimise visual impact and help absorb noise from within the unit. The main openings would be on the opposite side of the proposed units. Noise would be attenuated by these factors. The units are proposed to be for Class B1 uses (i.e. uses that are appropriate in a residential area); which can be secured by conditions. The difference in level and design of Unit 7 would mean that there would be no significant adverse visual impact on the dwellings or gardens. The other issues raised in representations on the planning application have been properly addressed in that section of the Committee report and I agree with the conclusions reached.

Conclusion

28. For the reasons given, the proposal would not preserve or enhance the character or appearance of the Cyfartha Conservation Area. As explained above, the proposal would also have an adverse effect on the setting of the Grade II* listed building and SAM, Pont-y-Cafnau footbridge and on the setting of the Cyfarthfa Ironworks SAM. As such the proposal is contrary to the legal tests and relevant policy in PPW, TAN 24 and Local Development Plan Policy BW6 for development affecting Conservation Areas and the setting of listed buildings and SAMs. The sub-standard junction with Brecon Road and poor pedestrian access through the industrial estate would be detrimental to highway safety contrary to Policy BW12. There is insufficient information to assess the impact of the proposal on Cwm Taf Fechan SINC and the habitats and species found therein, and in particular the trees adjoining the proposed access. There is insufficient information to assess the impact of the proposal on protected species. For these reasons the proposal would be contrary to LDP Policies BW5 and AS6 and national policy and guidance in PPW and TAN 5. The benefits of the proposal in terms of employment and economic development and claimed screening and environmental enhancements do not outweigh the adverse impacts as identified.
29. 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 have had regard to advice in PPW Chapter 6 on Distinctive and Natural Places and the ways in which distinctive and natural places contribute to the seven goals of the Act³. I have also had regard to PPW Chapter 5 on Productive and Enterprising Places. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' revised well-being objectives to drive sustainable growth and combat climate change (no. 3); to build healthier communities and environments (no. 6) and to build resilient communities, culture and language (No. 10). I have applied advice on outcomes based on sustaining and creating places in which the role the historic environment, habitats and biodiversity play in contributing to distinctive and natural places are identified, valued and protected⁴. Having considered all relevant matters, I conclude that the appeal should be dismissed.

A L McCooey

Inspector

³ As set out in pages 118 and 120 of PPW

⁴ PPW p. 122