



Appeal Decision

by C MacFarlane BSc(Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 26/03/2024

Appeal reference: CAS-02533-K1J3B8

Site address: Land northwest of Aartal bungalow, adjacent to EFI Industrial Estate, off Brecon Road, Merthyr Tydfil CF47 8RB

- 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 Chris Marshall against the decision of Merthyr Tydfil County Borough Council.
 - The application Ref P/22/0222, dated 18 August 2022, was refused by notice dated 15 November 2022.
 - The development proposed is the re-siting of existing residential mobile home, expansion of residential curtilage and construction of day room/utility area, provision of ancillary tourer and parking area with ecological enhancements.
 - A hearing was held on 29 February 2024.
 - A site visit was made on 12 March 2024.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. At my site visit, I saw that the static caravan has been re-sited, the residential curtilage expanded, and the parking area laid out. I have taken these works to constitute the commencement of development, and I have therefore dealt with the appeal as one that seeks planning permission under s73A(2)(a) of the Act.
3. Following a consultation response from Natural Resources Wales (NRW), the Council confirmed its withdrawal of the reason for refusal relating to flood risk. Having considered the comments provided by NRW and having regard to the advice in Welsh Government (WG) Technical Advice Note 15 'Development and Flood Risk', I am satisfied that the proposal would not result in harm in relation to flooding.
4. Since the appeal was submitted, Planning Policy Wales 12 (PPW) was published on 7 February 2024. It consolidates previously published revisions to PPW and other WG announcements. Of particular relevance to this appeal, those changes include revisions to Chapter 6 of PPW that were published in October 2023. Both parties were invited to provide written comments on these revisions during the appeal process, and were also discussed at the hearing.

5. The Council does not dispute the Gypsy status of the appellant. Based on the written information provided, and statements made at the hearing, relating to current and previous lifestyle and occupation, I am satisfied that the intended occupiers meet the definition of 'Gypsies and Travellers' set out within the Housing (Wales) Act 2014 and Welsh Government Circular 005/2018 'Planning for Gypsy, Traveller and Showpeople Sites' (the Circular).
6. I have considered the possibility of a split decision but cannot be satisfied that the individual elements of the scheme are functionally and physically severable. I have therefore reached my decision on the development in its entirety.

Background and Main Issues

7. There is a detailed planning history on the site but of most relevance to this appeal are the permissions granted in 2013 and 2016. Planning permission was granted at appeal (Ref. APP/U6925/A/16/3151450) in 2016 for 'the siting of a mobile home for residential purposes' on a smaller part of the southern end of the appeal site, which was not subject to a condition restricting occupancy to those of Gypsy and Traveller status. This followed an earlier permission granted in 2013 for 'change of use of vacant land to B8 storage and retention of store building, retention of stable block with associated access, retention of timber fencing along eastern boundary of site'. The site area associated with the 2013 permission covers a larger area than the 2016 permission and includes most of the appeal site, whilst extending further north and east. However, the 2013 permission site layout indicates the majority of the area as remaining undeveloped, with the built development focussed in the southern part of the site.
8. The relationship of the site to the settlement boundary and other designated areas has altered over time. Prior to the adoption of the Merthyr Tydfil Replacement Local Development Plan 2016-2031 (LDP) in 2020, the entirety of the appeal site was within the Merthyr Tydfil settlement boundary and the Cwm Taf Fechan Site of Importance for Nature Conservation (SINC). Following boundary amendments in the current LDP, the site is now outside the settlement boundary, and the majority of the site sits outside the SINC. The site is now also located within the Nant Morlais & Cwm Taf Fechan Special Landscape Area (SLA).
9. Against the background that I have described, the main issues are:
 - (i) The effect of the development on the character and appearance of the area, including whether it would preserve or enhance the character or appearance of the Cyfarthfa Conservation Area (CA);
 - (ii) The effect of the development on ecology; and
 - (iii) Whether any identified harm would be outweighed by the material considerations advanced in favour of the development.

Reasons

10. The appeal site is a narrow plot of land adjacent to an industrial estate, with wooded areas and grassland around much of the boundary. The ground level rises steeply to the east, up to the access road serving the industrial estate, and falls away to the west to the Taf Fechan river. The site is located outside, and adjoining, the settlement boundary as established by the LDP. The surroundings include extensive areas of woodland and watercourses, which are features of the CA and SLA, within which the appeal site is located. The SINC is located close to the appeal site, with a small area along the western boundary falling within the designation.

Character and appearance

11. LDP Policy SW4 restricts development outside settlement boundaries to a number of exceptions, within which the appeal proposal does not fall and therefore fails to accord with this policy requirement. However, the Circular and LDP Policy SW8 both allow for the development of Gypsy and Traveller sites in countryside locations. It therefore follows that such developments can be acceptable outside of settlement boundaries. Consequently, I do not consider the proposal to be unacceptable solely on the basis of its location outside the settlement boundary.
12. I was informed at the hearing of the characteristics of the SLA, which were given as heritage, natural resource and ecology, with the features of trees, watercourses, vegetation, ecology and historic assets collectively contributing to its special qualities. Whilst the development would result in the loss of trees, grassland and vegetation, this represents a minimal and peripheral area of the overall SLA. Furthermore, the character of the immediate area around the site is already heavily influenced by the commercial activities and functional appearance of the varied buildings associated with the industrial estate, and the existing authorised structures and hardstanding on part of the site. As such, the development would be read as a relatively minor extension of the existing built form that would have a negligible impact on the SLA.
13. Section 72(1) of the Town and Country Planning (Listed Building and Conservation Areas) Act 1990 confers a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a CA. A copy of the Cyfarthfa CA Character Appraisal (2009) and plan of the designated area has been provided, although at the hearing I was not directed to the specific relevant section that relates to the Council's concerns. I note the references in the appraisal to the importance of the area's industrial heritage to the CA designation, and the site's location within Character Area 3 'Taf Fechan Valley'. From my reading of the document, sections 4.6, 4.8, 4.10 and 5.4 are of most relevance, which describe the presence of open areas with minimal development, woodland and biodiversity.
14. During my site visit, I observed substantial wooded areas and corridors, and grassland, of which the site forms part, and these make a positive contribution to the natural character of this area of the CA. Although the development would result in the loss of some of these features, this would have little effect on the CA overall, given the relatively small area affected and the existing dominance of the immediate area by the industrial estate and other development on site.
15. Whilst a lack of visibility does not by itself justify harmful development, in this case, views of the development would be relatively limited given the surrounding topography and narrow proportions of the site, and would be experienced mostly from close to the site itself. I note the Council's concerns regarding future incremental development, however, no substantive evidence has been provided to lead me to the view that this appeal should not be determined other than on its own merits.
16. I therefore conclude the proposed development would not cause significant harm to the character and appearance of the area, and would comply with LDP Policy CW1, which permits development where it would preserve or enhance the architectural quality, character or the historic or cultural importance of designated historic environment assets. It would also comply with LDP Policy EnW5, which requires development within SLAs to be sensitive to their special characteristics.

Ecology

17. PPW sets out a step-wise approach for proposals to maintain and enhance biodiversity, build resilient ecological networks and deliver net benefits by ensuring that any adverse

effects are firstly avoided, then minimized, mitigated and, as a last resort, compensated for. Paragraph 6.4.16 states that all development must deliver a net benefit for biodiversity and ecosystem resilience. This must be achieved from the point before any site clearance has taken place and, in such cases, habitat status will be presumed to be good in the absence of any evidence to the contrary. The requirement to maintain and enhance biodiversity is reflected in LDP Policy EnW1, with exceptions permitted where the need for the development clearly outweighs the biodiversity value of the site, and the impacts can be satisfactorily mitigated and acceptably managed. Policy EnW3, in seeking to prevent harm to sites designated for nature conservation, and priority habitats and species, echoes the requirements of PPW and Policy EnW1.

18. Based on the photographs provided, it is evident that the elements of the proposal already carried out have resulted in the loss of mature trees, grassland and the removal of part of the earth bank along the eastern boundary. In the absence of any ecological survey or assessment carried out prior to the commencement of development, the nature and extent of the effects of the proposal on ecological interests is uncertain. However, given the proximity of the site to the SINC and the substantial loss of habitat, as well as the policy set in PPW, I consider that a precautionary approach is justified.
19. I acknowledge the appellants arguments in relation to the need for the proposed development, and I address this matter later in my decision. With regard to the step-wise approach, there is little to persuade me that reasonable alternatives for the proposal have been fully considered. Whilst the proportions of the existing authorised site may be a limiting factor in accommodating the various elements of the scheme, there is insufficient evidence to show that alternatives, such as layout, site area and day room size, which may result in less or no harm, have been properly considered and discounted.
20. The proposal includes new tree planting wrapping around the northern boundary of the site as well as bird and bat boxes on the day room building. Whilst this would provide some benefit, given the lack of information in relation to the ecological impacts of the proposal, it is uncertain whether this would be sufficient to ensure a net benefit to biodiversity. Furthermore, the proposed planting to the northeast appears to be on land outside the appellant's control, and there are a number of existing trees along the northwest boundary. This serves to further reduce the certainty as to the extent of any additional benefit that may result from the proposed planting and biodiversity measures.
21. I acknowledge the appellant's willingness to provide further planting beyond that proposed, which may be secured through a condition. However, I have concerns as to whether these measures would be both achievable and effective. As the landownership information provided indicates that the bank between the eastern boundary of the site and the access road is outside the appellant's control, there is no certainty that replacement tree planting in this area could be secured. Furthermore, in the absence of details relating to ground conditions following the excavation work carried out, I cannot be confident that any requirement for planting would realistically be achievable. I note the appellant owns land to the north of the site, which could potentially accommodate compensatory planting. However, it is unclear whether the presence of overhead power lines crossing this area, and the site, would restrict the extent of tree planting achievable. Nor is it clear whether this would allow the proposal to provide replacement tree planting at the ratio set in paragraph 6.4.42 of PPW. Concerns regarding the effect of external lighting on nocturnal species could, however, be addressed through the imposition of a suitably worded condition.
22. For these reasons, I cannot be confident that the measures proposed would be sufficient to ensure that biodiversity would be maintained and enhanced, or that adequate measures to achieve this could be secured through a condition. As a result, it has not

been demonstrated that the impacts of the development can be satisfactorily mitigated, and the proposal would not meet this criterion of Policy EnW1.

23. Although the Council may not have raised concerns regarding ecology during the consideration of previous applications and appeals on the site, I must determine this appeal based on the current policy framework, evidence and the scheme before me, which differ from those previously considered.
24. Drawing together all of the above, I conclude that the development would cause significant harm in relation to ecology and would fail to comply with LDP Policies EnW1 and EnW3.

Material considerations advanced in favour of the development

25. The Council does not object to the principle of a day room building on the site and, given the advice contained in Welsh Government's 'Designing Gypsy and Traveller Sites' (2015) guidance, there would be significant benefits through the provision of a separate amenity area which reflects the cultural need for such a facility.
26. The appellant has also drawn my attention to Welsh Parliament's Local Government and Housing Committee report 'Provision of sites for Gypsy, Roma and Travellers' (2022) which highlights very limited progress by local authorities in developing new culturally appropriate sites for Gypsy, Roma and Travelling communities across Wales, and includes a series of recommendations to address the identified shortcomings. Whilst the report provides useful background information and context for matters relating to site provision, its findings and commentary are general rather than specific to this appeal or county.
27. In this particular case, the day room would also include a dedicated facility for the appellant's three children who are currently homeschooled. At the hearing, the appellant's representative made oral submissions explaining the difficulties encountered in mainstream school settings, and of the intention for the children to be entirely homeschooled up to and including secondary school age. Hence, I do not dispute that the provision of a separate space of sufficient size for IT equipment and other materials, away from the distraction of day-to-day domestic activities, would have clear benefits for the children's education.
28. The proposal would represent an extension to the existing site area authorised for residential use and occupied by the appellant and his family. As such, no meaningful consideration has been given to the availability of any alternative sites. The Council confirmed it is unaware of any alternative sites which may be suitable and available either presently or in the near future. The Council-owned Glynmil site is currently fully occupied and there are no plans to extend this provision. In addition, the appellant left the Glynmil site several years ago due to safety concerns arising from tensions between residents and has attested to his unwillingness to return. It is well established through case law that there is no requirement for site proponents to prove non-availability of other sites. The lack of realistic alternative sites that meet identified cultural needs is thus a matter that weighs in favour of the proposal.
29. I acknowledge the appellant's desire to secure additional, culturally appropriate living accommodation and parking space, adjacent to his existing home and in a location close to his business premises. However, I have not been presented with any written evidence nor heard any oral submissions at the hearing that convinces me that the scheme before me is the only realistic or reasonable means by which these aims could be achieved.

Planning Balance

30. I have found that the development is acceptable with regard to its effect on the character and appearance of the surrounding area, including that it would not offend the duty in the Act to have special regard to the desirability of preserving or enhancing the character and appearance of the CA.
31. There would be benefits both culturally and for the children's education. Given that I must not treat any other consideration as inherently more significant than the best interests of the children, I attach significant weight to this matter. The lack of alternative sites is also afforded significant weight.
32. However, I have found that there would be harm caused to ecology. Taking account of the duty on public authorities conferred by Section 6 of the Environment (Wales) Act 2016, Policy 9 of Future Wales, and the latest iteration of PPW, all of which emphasise the need to maintain and enhance biodiversity, this consideration also attracts significant weight.
33. In balancing these matters, I am mindful of the existing authorised use of part of the appeal site for residential purposes. In the event of the dismissal of the appeal, the appellant and his family would be able to remain on-site and their current living arrangements, and the children's access to education, could continue. That is, there has been no suggestion that this decision would place a burden on the appellant to find alternative accommodation or that the family would be forced into a roadside existence. Taking all of these factors into account, I consider that the harm to ecology is a compelling factor that outweighs the benefits of the proposal and its acceptability in other respects. Whilst I recognise that the best interests of the children would be served by providing access to a culturally appropriate home life, I am satisfied that the harm to ecology justifies the interference in this instance in the public interest.
34. In reaching my decision, I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (WBFG Act). I have taken into account the ways of working set out at section 5 of the WBFG Act and consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives, as required by section 8 of the WBFG Act.

Conclusion

35. For the reasons given above, the appeal is dismissed.

Claire MacFarlane

INSPECTOR