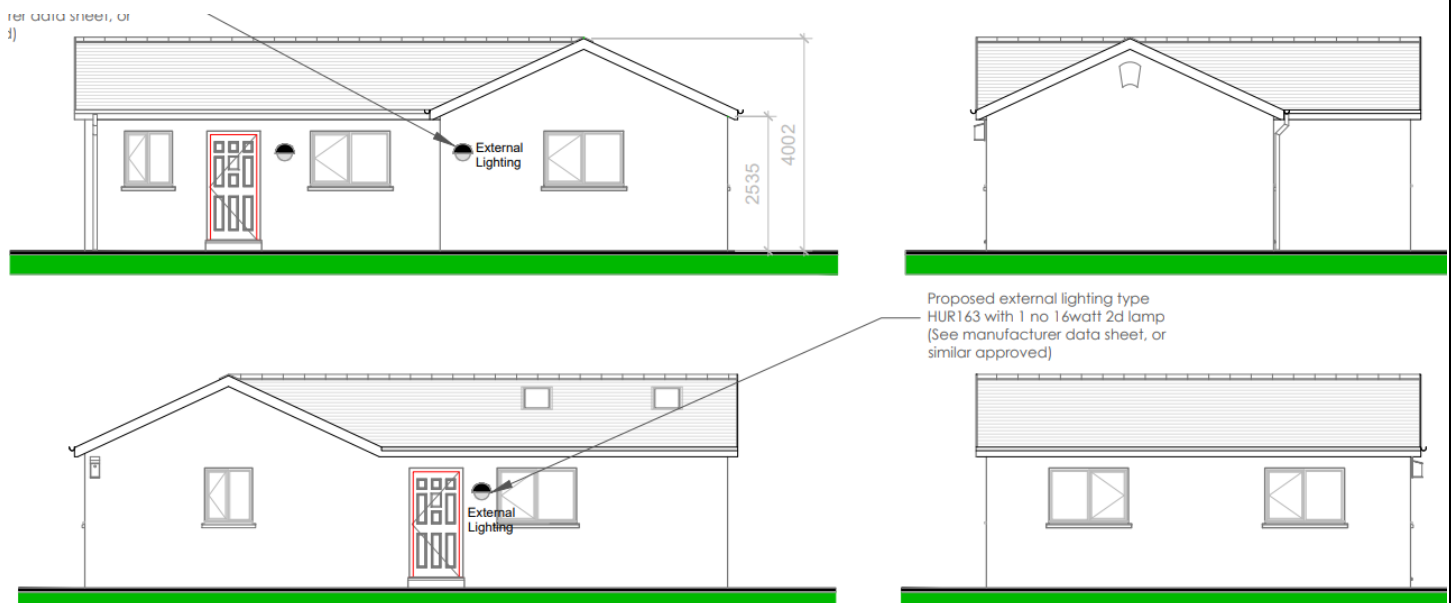


SECTION 78 PLANNING APPEAL

STATEMENT OF CASE AGAINST THE
REFUSAL OF PLANNING PERMISSION PL/22/0222
FOR THE RESITING OF AN EXISTING RESIDENTIAL MOBILE
HOME, EXPANSION OF RESIDENTIAL CURTILAGE,
CONSTRUCTION OF A DAY/UTILITY ROOM, PROVISION OF
ANCILLARY TOURER AND PARKING AREA AND ANCILLARY
ECOLOGICAL ENHANCEMENTS

LAND NORTHWEST OF AARTAL BUNGALOW, OFF BRECON
ROAD, MERTHYR TYDFIL, CF47 8RB

7th February 2023



Scan of refused Drawing 06b of the proposed day rooms elevations



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HAYS / 1474

Application for Planning Permission

Town and Country Planning Act 1990

1.0 DOCUMENTS SUBMITTED IN SUPPORT OF THIS APPEAL

1.1 The originally submitted Planning and Justification Report was a comprehensive document detailing the appellant's personal circumstances, the identified need for the proposed day/utility room and extension to the curtilage and a thorough assessment of the relevant policies in the Merthyr Tydfil Local Development Plan and National Policy. For the purposes of this appeal, and to avoid unnecessary repetition, it is intended to address the three reasons for refusal with reference to the Planning Statement and Justification Report (Rev A dated 18th August 2022) & Appendix A which was submitted as part of the documentation to support planning application PL/22/0222. This report is attached at **Appendix 1. (Appendix A of the planning application submission contains private and confidential information about the family's personal circumstances and is not for publication or public scrutiny, only for the Planning Inspector's review)**. Please note the supporting drawings submitted as part of this application are obviously made available as part of this appeal process and should also be referred to.

2.0 INTRODUCTION

2.1 The full planning application (Ref P/22/0222) was submitted to the local planning authority on 27th January 2022, registered by the LPA on 24th August 2022 and was refused under delegated powers granted to the Head of Planning by notice dated 15th November 2022 for the following reasons: -

1 The proposal, by virtue of the extended hardstanding area and re-profiling works to the eastern embankment, has resulted in the loss of grassland and woodland areas to the detriment of the character and appearance of Cyfarthfa Conservation Area and the quality of the Nant Morlais & Cwm Taf Fechan Special Landscape Area. Therefore, the development is contrary to policies CW1 and EnW5 of the Merthyr Tydfil Replacement Local Development Plan.

2 The proposal, by virtue of the loss of grassland and woodland habitat environments, has a detrimental impact on the conservation value of the Cwm Taf Fechan Site of Importance to Nature Conservation. The development fails to maintain and enhance biodiversity interests and is therefore contrary to policies EnW1 and EnW3 of the Merthyr Tydfil Replacement Local Development Plan.

3 The proposed extended residential use (highly vulnerable development), would be inappropriately located partly within a zone C2 flood risk area, as defined by the Development Advice Map (DAM), referred to under TAN15: Development and Flood Risk. Therefore, the development is contrary to policy EnW4 of the Merthyr Tydfil Replacement Local Development Plan, Planning Policy Wales (11th Edition) and TAN15: Development and Flood Risk

3.0 ANALYSIS OF THE THREE REASONS OF THE REFUSAL NOTICE. AND RESPONSE ON BEHALF OF THE APPELLANT.

3.1 The application was determined under delegated powers granted to the Head of Planning. In responding to the reasons for refusal the Inspector's attention is drawn to Section 4 – 6 of the planning submission, dated 18th August 2022.

3.2 Reason 1

Policy CW1: The Historic Environment The integrity of our historic environment assets will be conserved and enhanced.

Development affecting undesignated historic environment assets including, Locally Listed Buildings or structures, Landscapes of Outstanding Historic Interest in Wales, Urban Character Areas and Archaeologically Sensitive Areas should have regard to their special character and archaeological importance

Development proposals will only be permitted where it can be demonstrated they would preserve or enhance the architectural quality, character or the historic or cultural importance of our designated historic environment assets. Development affecting undesignated historic environment assets including, Locally Listed Buildings or structures, Landscapes of Outstanding Historic Interest in Wales, Urban Character Areas and Archaeologically Sensitive Areas should have regard to their special character and archaeological importance.

Policy EnW5 Landscape and Special Landscape Areas Policy EnW5: Landscape Protection

The following area is designated as Special Landscape Areas (SLAs): • SLA1: Nant Morlais & Cwm Taf Fechan.

Development proposals will be permitted where it can be satisfactorily demonstrated that:

- a) It would not cause unacceptable harm to the character and quality of the landscape setting of the County Borough.
- b) Development within Special Landscape Areas are sensitive to their special characteristics.
- c) Development respects the local distinctiveness and historic character of the landscape.
- d) Development will safeguard local landscape character and landscape features, including views, which make a significant contribution to the character, history and setting of the locality.
- e) Development secures the enhancement of the character, appearance and quality of the landscape, through restoration, management or enhancement where possible.
- f) There is no satisfactory alternative and the benefits associated with the development can be demonstrated to outweigh the harm; and
- g) Where damage to local landscape character cannot be avoided appropriate mitigation has been secured.

3.3 Reason 2

Policy EnW1: Nature Conservation and Ecosystem Resilience Development

Proposals will be required to promote the resilience of ecosystems. In particular, proposals will be required to maintain and enhance biodiversity interests unless it can be demonstrated that:

1. The need for the development clearly outweighs the biodiversity value of the site; and
2. The impacts of the development can be satisfactorily mitigated and acceptably managed through future management regimes.

Policy EnW3: Regionally Important Geological Sites, Sites of Importance for Nature Conservation, Local Nature Reserves and Priority Habitats and Species

Development proposals likely to have an adverse impact on Regionally Important Geological Sites, Sites of Importance for Nature Conservation, Local Nature Reserves, or Priority Habitats and Species will only be permitted where it can be demonstrated that:

1. The need for the development clearly outweighs the conservation value of the site; 2. Adverse impacts on nature conservation features or geological features can be avoided.
3. Appropriate and proportionate mitigation and compensation measures can be provided; and
4. The development maintains and where possible enhances biodiversity and geodiversity interests.

Sites of Importance for Nature Conservation (SINC) are identified to protect areas of high wildlife value at a local level.

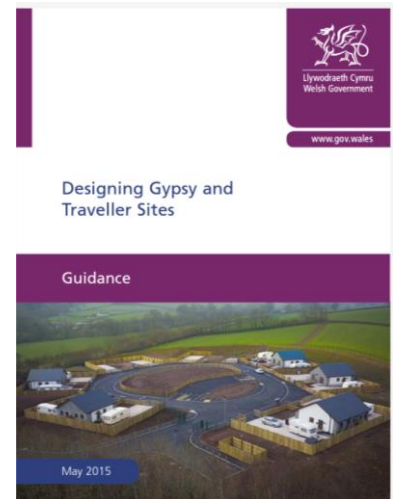
3.4 The LPA considers the extended hardstanding area and reprofiling of the embankment have resulted in the loss of grassland and woodland areas to the detriment of the character and appearance of the Cyfarthfa Conservation Area and the Nant Morlais and Cwm Taf Fechan Special Landscape Area. Furthermore, the LPA also considers the proposal will have detrimental impact on the value of the Conservation Area and SINC.

3.5 Considering the small-scale nature of the proposal and the appeal site within the context of its siting, it occupies a small area of previously partly developed land immediately adjacent to a large-scale business park which has a far greater impact on the integrity of the surrounding historic environment, quality of the designated land and biodiversity interests. The appeal site is used as a live/work premises directly related to the appellants nearby business and is only a relatively minor extension.

3.6 At this juncture, the Inspector's attention is drawn to **Appendix 1** of the original planning statement accompanying the submission. The appellant cleared the appeal site of self-set shrubs and small trees in 2016 to make way for the approved hardstanding area granted in 2013 and residential caravan in granted in 2016 on appeal (Ref P/13/0211 and P/16/0010 respectively). To compensate for the loss of a small area of grassland, shrubs and trees the appeal proposal details an improved landscaped earth bank area along the northern boundary of the site. This will compliment the trees on the land further to the north and create a natural barrier to help ecology and screen the site and planning unit. Reference will be made to an

Enforcement Notice (Ref PE/17/0005) issued on 13th December 2017 in Section 4 below of this statement.

3.7 With regards to the proposed day/utility room the original planning statement identifies a need for a larger than average building as the appellants' children requires a dedicated study area as the children are tutored at home. The LPA do not appear to raise any objections to the scale, design and nature of the proposed day/utility room and accept the principle. The proposal will provide an important social and welfare facility for the family in accordance with The Well Being of Future Generations (Wales) Act 2015 in order for them to continue their traditional and cultural way of life. Unusually, at present, the appellants do not benefit from any quality day room space on this pitch. No public or private sites were available as an alternative within the County at that time and this continues today. Finally, the layout and design of the pitch reflects the standard layouts in Welsh Government advice for Gypsy developments "Designing Gypsy and Traveller Sites, May 2015". These facilities allow the applicants to have a settled and tranquil base, with suitable home comforts.



3.8 With regards to Reason 3 the LPA are of the opinion part of the appeal site is located within a C2 flood risk area as defined in the original Development Advice Map issued with the TAN 15 (2004) and is therefore vulnerable to flooding. The Officers delegated report contains no information regarding any instances of flooding in this area. This practice has taken advice from Francis Sant Limited Flood (Hydrology Consultants) who have made the following comments and observations.

'On the new Flood Map for Planning, which will be adopted in June 2023, the site will effectively be outside the flood zone, However, the planning officer seems to be hiding behind outdated policy. On the current DAM maps, part of the site seems to, erroneously be within the C2 flood zone and, therefore, a residential development should not be allowed. Revised DAM maps, due to be adopted in July 2023, represent a true reflection of potential flooding in the area. The maps will no longer be updated, and reference will need to be taken to the FMFP (which are updated by NRW on behalf of the Welsh Government) and should now be considered as the correct flood coverage in this area; In view of the above there is considerable doubt as to the validity or relevance of Reason 3 to the appeal and indeed the existing residential caravan and day room are clearly not in the floodzone. Indeed it is likely that this appeal decision will be made after June 2023 so the later plan is more relevant.





Current Development Advice Map Flood Map C1 / C2 Designation



NRW Future (June 2023) Development Advice Map – appeal site is outside the floodzone

4.0 THE ENFORCEMENT NOTICE ISSUED IN DECEMBER 2017.

4.1 An enforcement Notice (ref PE/17/005) was issued by the LPA and served on the appellant in December 2017 and a copy of the Notice is contained in **Appendix 2**. The Notice alleged a) the material change of use of the land (incorporating the current appeal site) without planning permission to a mixed use of residential and commercial and: b) the laying of a gravel hardstanding, the siting of domestic structures, the parking of vehicles and engineering works. The Notice required cessation of the uses, removal of specified items and restoration of the land within a 24-week period.

4.2 After scrutinizing the two planning permissions granted in 2013 and 2016, (Ref P/13/0211 and P/16/0010 on appeal respectively) and the comparison plan shown on Drawing 09b and extract on page 14 of the Planning Statement in **Appendix 1**, it appears that planning permission has been granted for some works to take place within the area covered by the Enforcement Notice (edged in green). Nevertheless, the appellant has removed some of the hard surfacing and domestic paraphernalia from the land as part of compliance. The purpose of the planning application and appeal is two-fold:

- A) To provide an essential family day/utility welfare room with an area to be used as a tutoring room for the children's education and,
- B) To regularise some of the unauthorised works previously undertaken together with additional landscaping to screen the site. The submitted application achieves these two goals and argues without significantly harming the character and appearance of the historical and ecological importance of the adjoining land to the north to any significant degree. As seen the appeal site location on a partly brown field site is immediately adjacent to the EFI Industrial Estate and tucked up in a valley that is well screened by established tree and planting and so the extension is not prominent.

5.0 OTHER MATERIAL CONSIDERATIONS

5.1 The Senedd and Senedd's Local Government and Housing Committee are calling for immediate action after their new report illustrated wide-ranging failures by the Welsh Government and Local Authorities in providing adequate sites for Gypsy, Roma and Traveller communities or supporting proposals for extending existing sites. The Committee's report found that many sites are situated in inappropriate areas, such as at the side of dangerous roads or far away from services and amenities, with no facilities for children or the elderly and, despite previous commitments made by the Welsh Government to improve the situation, this has not translated into any meaningful changes for families.



5.2 The above reports are highly critical of both the National and Local Governments in Wales who are not doing enough to support the Gypsy, Roma and Traveller community in the provision of public sites or in supporting planning applications for appropriately located private pitches where a need has been identified. Disturbingly, the report identified racism and prejudice against members of these communities is rife when planning applications are

determined. It is interesting to note that no officer from the Council's Housing Department responded to requests from the Senedd's Local Government and Housing Committee to make comments on the findings of the report.

5.3 The current need for Gypsy and Traveller pitches in Wales still markedly outstrips provision. A above mentioned Welsh Government reports called for 'immediate action' and highlighted the 'wide-ranging failures by Welsh Government and local authorities in providing adequate sites for Gypsy, Roma and Traveller Communities'. One of its key recommendations was for the Welsh Government to set out 'how and when it will use its powers to ensure that councils are delivering on their duties in finding appropriate sites for Travellers. This practice is aware that the process for identifying, developing and delivering local authority sites has been slow and that in fact Welsh Government figures show that despite the new duty under the Housing Act (Wales) 2014 the majority of new pitch need in Wales are not being delivered in the way that was envisaged but rather being met by Gypsy and Traveller families themselves applying to develop private sites and meeting their own need with no expense to local authorities. These small, family-based sites are often the preferred choice not just for families but for wider reasons including supporting diverse and cohesive communities and lessening the impacts of larger developments.

5.4 The Planning and Justification Report (RevA) submitted as part of the planning application (See **Appendix 1**) identified a clear need for the family day/utility room as they do not have welfare facilities on site. The area previously cleared by the appellant is an appropriate location for a small extension to the authorised pitch to accommodate the proposed development which is low level in nature having minimal impact on the character, appearance or historic value of the adjoining land to the north. The LPA appears to have failed to identify it is only an extension of use to the residential caravan, B8 shed and business and stable block / yard. The important welfare needs of the family clearly outweigh any clear identified harm in this case.

5.5 Finally, whilst it is not a consideration of the appeal this practice has had dialogue with the LPA, via email, to see if alternatives in regard to the dayroom scheme, could be informally agreed in a type of pre-application submission. However, replies have been slow and unhelpful and below is an extract from an email (dated 12th December 2022) from the Planning Case Officer in regard to the stables:-

"Its not really for me to decide where the building should be located, or indeed agree to the scale or footprint of the building. I would simply re-iterate my previous advice that the day room building shall be located within the approved residential curtilage".

This reply from the LPA is deemed illogical for the following reasons:

- The curtilage of the original allowed appeal is small and the dayroom would not fit.
- The area and entrance of the appeal site has an active B8 shed / business, with extensive vehicle operation, so not considered a suitable environment for a family dayroom especially in regard to the safety of young children. Therefore, a more suitable and safe location that is well screened is required and which is what is proposed to the north of the site.

6.0 CONCLUSION

6.1 The proposed building is low level, in nature, of a sustainable design and use of materials set against a backdrop of mature trees and elevated land. It is well screened by surrounding boundary fencing significantly reducing its visual impact on the character and appearance of the surrounding area and importantly having minimal impact of the historical features and characteristics of the Conservation Area / SINC. Ecological/biodiversity interests are enhanced by the provision of bat and bird boxes on the proposed day/utility room. Additional landscape/planting are offered to help screen the site and to compliment the area to the north. The proposed residential and touring caravans are, by their very nature, mobile structures capable of being sited anywhere within the appeal site.

6.2 Considering the small-scale nature of the proposal (of a needed extension / welfare facility) within the context of its siting, it occupies a small area of previously developed land immediately adjacent to the large-scale EFI Industrial Estate which has a far greater impact on the integrity of the surrounding historic environment, quality of the designated land and biodiversity interests. The appeal site is used as a family live/work premises directly related to the appellants nearby business

6.3 The appeal site and proposed building are located outside of a C2 flooding zone on the revised DAMs which are expected to be adopted later this year (June 2023) superseding the original and very much outdated DAMs in TAN 15. The residential caravan already has planning permission and the dayroom does not have anyone sleeping in it and is just an important amenity facility for the family.

6.4 The proposal provides an important social and welfare facility for the family to enjoy their traditional Gypsy cultural way of life and an educational facility for the appellants' children and, as such, should be supported for welfare reasons

6.5 The proposal is broadly compliant with the relevant adopted LDP policy criteria and even if there is conflict, the evidence put forward in the planning application (and supporting Planning and Justification Report RevA) demonstrated that 'very special circumstances' exist within the planning balance and, considering the lack of any suitable available sites and the fact the proposals are necessary for the future wellbeing of the family outweighs any potential harm to the landscape and historic significance that this small development may cause. It is therefore respectfully requested the appeal be upheld subject to the imposition of suitable planning conditions as a decision to allow the appeal would be in accordance with the sustainable principle through its contribution towards one or more of the Welsh Ministers well-being objectives as required by section 8 of the WBFG Act.

REPORT PREPARED BY
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DIRECTOR/PRINCIPAL PLANNER

Appendices