

From: PEDW.Casework@gov.wales
Sent: 17 October 2023 07:29
Subject: 57 Pontmorlais High Street, Merthyr Tydfil, CF47 8UN P/22/0271 CAS-02558-Z1K7P8
Attachments: 05. Feedback, Complaints and Challenges - Planning and Environment Decisions Wales.pdf; 2023-10-17 - CAS-02558-Z1K7P8.pdf

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Annwyl Syr/Madam / Dear Sir/Madam,

Amgaeaf benderfyniad yr Arolygydd ar yr apêl uchod. / I enclose the Inspector's decision on the above appeal.

Cofion / Regards

Sara Pritchard

Cymorth Busnes / Business Support

Penderfyniadau Cynllunio ac Amgylchedd Cymru / Planning and Environment Decisions Wales

Llywodraeth Cymru / Welsh Government

CP2, Parc Cathays, Caerdydd, CF10 3NQ / CP2, Cathays Park, Cardiff, CF10 3NQ

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Feedback, Complaints and Challenges - Planning and Environment Decisions Wales

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 03001231590 if you want to make your complaint over the phone.
- You can e-mail us at PEDW.Complaints@gov.wales
- You can write a letter to us at the following address:
Planning and Environment Decisions Wales
Welsh Government
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.

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.

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 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. Planning and Environment Decisions Wales 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

Correction of minor errors

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

3.16. 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

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

3.18. 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.

Putting things right

3.19. Where maladministration or an error by Planning and Environment Decisions Wales 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, Planning and Environment Decisions Wales will provide compensation for unnecessary expense incurred as a result of an acknowledged error where there are compelling reasons to do so.

3.20. Planning and Environment Decisions Wales 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.

3.21. 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

3.22. *"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.

3.23. *"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.

3.24. *"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.

3.25. *"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).

3.26. *"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.

3.27. *"What can I do if someone is ignoring a planning condition?"* – Planning and Environment Decisions Wales 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.

Grounds for challenging the decision

4.4. 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 Planning and Environment Decisions Wales for re-determination.

Challenges to planning appeal decisions

4.5. 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

4.6. 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

4.7. *“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).

4.8. *“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 Planning and Environment Decisions Wales’s costs as well as your own.

However, if the challenge is successful Planning and Environment Decisions Wales will normally be required to meet your reasonable legal costs.

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

4.10. *“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 Planning and Environment Decisions Wales’s legal representative.

4.11. *“Will a successful challenge reverse the decision?”* – Not necessarily. The Court can only require Planning and Environment Decisions Wales to reconsider the case and an Inspector may come to the same decision but for different or expanded reasons.

4.12. *“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

4.13. 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

4.14. Where a challenge is successful, the appeal will be returned to Planning and Environment Decisions Wales 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. Planning and Environment Decisions Wales will usually appoint a different Inspector to re-determine the appeal.

4.15. 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.

4.16. 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.

4.17. 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

4.18. For re-determined appeals where the inquiry is expected to last 8 days or more, Planning and Environment Decisions Wales 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.

4.19. 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. Planning and Environment Decisions Wales

Planning and Environment Decisions Wales
Welsh Government
Crown Buildings
Cathays Park
Cardiff
CF1 3NQ

Phone: 03001231590

E-mail: PEDW.Complaints@gov.wales

Website: <https://gov.wales/planning-and-environment-decisions-wales/contact-us>

5.2. Public Services Ombudsman for Wales

Public Services Ombudsman for Wales¹
Ffordd yr Hen Gae
Pencoed
CF35 5LJ

Helpline: 0300 790 0203

Website: <http://www.ombudsman.wales>

Email: ask@ombudsman.wales



Appeal Decision

by R H Duggan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

17.10.2023

Appeal reference: CAS-02558-Z1K7P8

Site address: 57 Pontmorlais High Street, Merthyr Tydfil CF47 8UN

- 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 Mrs Sara Lloyd against the decision of Merthyr Tydfil County Borough Council.
 - The application Ref P/22/0271, dated 4 October 2022, was refused by notice dated 28 November 2022.
 - The development proposed is described as '*Change of use of ground floor A1 Hairdressers to A3 Takeaway*'.
 - A site visit was made on 9 October 2023.
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Decision

1. The appeal is dismissed.

Main Issues

2. I consider the main issues to be the impact of the development on the vitality and viability of the town centre and whether the development would preserve or enhance the character or appearance of Merthyr Tydfil Town Centre Conservation Area (CA).

Reasons

3. The appeal property is located within the upper part of High Street within Merthyr Tydfil town centre with the ground floor being a vacant commercial unit (formerly a hairdressers). Other units in the vicinity include shops, cafes and restaurants, drinking establishments and professional services. Either side of the site are hot food takeaways, with several others near the appeal property and further along the street. Nevertheless, the main function of the High Street continues to be shopping with retailing being the dominating characteristic of the town centre.
4. Policy EcW3 'Retail Hierarchy' of the Merthyr Tydfil County Borough Council Replacement Local Development Plan (LDP) (2016 - 2031) advises that Merthyr Tydfil Town Centre is the favoured location for retail, leisure, and other complementary development, being situated at the head of a retail hierarchy. Proposals for new and enhanced retail, leisure and other complementary provision in this location will be

permitted where they improve the vitality and viability of the centre. Policy EcW5 'Town and Local Centre' advises that development enhancing the vitality and viability of the Town and Local Centres will be supported. The site is also located within a Townscape Heritage Initiative area which seeks to conserve the area and to ensure its economic vitality and viability.

5. Whilst there is a diversity of uses within the town centre, the immediate area surrounding the appeal property is characterised by a concentration of Class A3 take away food outlets. The proposal would therefore result in a further increase in non-retail uses in the area. I note that the appellant intends that the proposed use would operate during the day, however, hot food takeaways are often open mainly in the evening and so during the daytime often present a 'dead' frontage to the street. As such, although bringing a vacant unit back into use, it is likely to contribute little to vitality and vibrancy of the centre especially during the daytime. In comparison, shops and other commercial uses such as hairdressers are likely to attract shoppers into the town centre and be open during the daytime and have an active frontage to the street. As such, they make a more positive contribution to the vitality of the town centre in a way than a hot food takeaway may not. Even if the proposed take away were to be open throughout the day as the appellant states, I consider that allowing an additional hot food take away unit in an area that already contains a number of similar outlets would lead to an over-concentration of such uses to the detriment of the vitality and viability of this part of the town centre.
6. The site lies within the Town Centre Conservation Area (CA), the Town Centre (High Street and Pontmorlais) Urban Character Area (UCA1). Policy CW1 of the LDP advises that the integrity of our historic environment assets will be conserved and enhanced. 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. In this regard, the Council has referred to a previous appeal at the property (Reference: APP/U6925/A/16/3162524). I would agree with the previous Inspector's assessment that the essential character of this part of the CA is the diversity of visual activity at ground floor level associated with a High Street of small scale mainly retail uses.
7. The proposal would clearly add another Class A3 use into an area which already contains many other take away food outlets thus reducing the variety and mix of uses within the High Street and eroding the historic and retail character of this part of the CA.
8. I recognise that a shift in shopping trends have taken place in recent years which may impact on the retail function of town centres and note the appellant's reference to the UK Government's High Streets Task Force statistics. I also noted the appellant's assertions that the unit may remain vacant which could harm the public's perception of the area and potentially deter people from visiting the High Street. I also appreciate that the proposed business may provide economic benefits in the form of employment opportunities. However, these considerations do not outweigh my concerns in regard to the detrimental impact of the proposal on the town centre and the CA.
9. I therefore consider that having regard to the vitality and viability of the centre, the site does not represent a suitable site for a hot food takeaway, and it would conflict with Policies EcW3 and EcW5 of the LDP. Having regard to the duty imposed by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I conclude that the proposed development would neither preserve nor enhance the character of the CA thus conflicting with Policy CW1 of the LDP.

Conclusions

10. Having regard to the above and considered all other matters raised, I conclude that the appeal should be dismissed.
11. 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 objectives of building a stronger, greener economy as we make maximum progress towards decarbonisation, making our cities, towns and villages even better places in which to live and work and embedding our response to the climate and nature emergency in everything we do.

R. Duggan

INSPECTOR