



Appeal Decision

by R H Duggan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 17/10/2023

Appeal reference: CAS-02547-L1N1S5

Site address: Land Off Cardiff Road A4054 And To The North Of 21 Mount Pleasant Cardiff Road Merthyr Vale

- 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 Navid Childs against the decision of Merthyr Tydfil County Borough Council.
 - The application Ref P/22/0215, dated 13 June 2022, was refused by notice dated 6 October 2022.
 - The development proposed is the erection of a 2 bedroom cottage.
 - 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 whether the development is justified having regard to the location of the site within the open countryside; and the impact of the development on the character and appearance of the area and on nature conservation interests.

Reasons

3. The site is located within open countryside as defined in the Merthyr Tydfil County Borough Council Replacement Local Development Plan (LDP) 2016-2031 by Policy SW4. The policy amongst other things, seeks to ensure that development in the countryside is strictly controlled. However, in exceptional circumstances policy SW4 sets out, amongst other criteria, that development 'associated with a rural enterprise or the winning and working of minerals' may be permitted where such locations can be fully justified and satisfies other relevant plan policies. Planning Policy Wales (PPW) Edition 11 states that new housing in the open countryside should be strictly controlled. One exception to this is where it is essential for a dwelling to house a worker in a rural enterprise.
4. Although PPW requires the strict control of new houses in the open countryside, Technical Advice Note (TAN) 6: Planning for Sustainable Rural Communities confirms in

paragraph 4.3.1 that one of the few circumstances in which new isolated residential development in the open countryside may be justified is when accommodation is required to enable rural enterprise workers to live at, or close to, their place of work. Whether this is essential in any particular case will depend on the needs of the rural enterprise concerned and not on the personal preference or circumstances of any of the individuals involved. TAN6 sets out how proposals for permanent rural enterprise dwellings should be assessed and is supplemented by Practice Guidance on Rural Enterprise Dwellings. These specify a series of tests to be considered and in particular, the functional, financial and 'other dwelling' tests. The functional test addresses the need for a resident worker for the proper functioning of the enterprise; the financial test considers the economic sustainability of the enterprise; whilst the 'other dwelling' test considers if a functional need could be fulfilled by some other dwelling.

5. TAN6 advises that in order for local planning authorities to determine planning applications the policy requires that all applications are supported by robust supporting evidence. In all cases a planning application must be supported by a 'Rural Enterprise Dwelling Appraisal' (TAN6 paragraph 4.7.1) which addresses the tests. Although the appellant has submitted a Rural Enterprise Business Plan for a Micro Horticulture Business, this does not assess the tests set out within TAN6. Therefore, from the evidence before me, a Rural Enterprise Dwelling Appraisal has not been submitted in this case. Nevertheless, I will refer to the information set out in the business plan in assessing the proposal against the TAN6 tests below.

Functional test

6. The functional test is to establish whether it is essential, for the proper functioning of the enterprise, for one or more workers to be readily available at most times. It should relate to unexpected situations that might arise, for which workers are needed to be on hand outside of normal working hours for the particular enterprise. It provides the example for which workers are needed to be on hand day and night to deal with an emergency that would threaten the continued viability and existence of the enterprise without immediate attention. Thus, the test is one of necessity rather than desirability, reflecting the policy principle that unnecessary development in the open countryside should be avoided.
7. A covering letter and business plan sets out the general background to the proposed development, and highlights that the land forms part of a 6-acre small holding purchased in 2020 and managed solely by the appellant to provide a sustainable income from horticulture, primarily through the sale of garden plants. The business plan states that the business and personal objectives of the enterprise is to provide a sustainable income stream from horticulture, produce the majority of food for up to 4 people, and promote a sustainable and ecologically responsible lifestyle. The business model and strategy for garden plant sales is to produce low volume high value plants in a non intensive way to undercut the typical sale value of large garden centres, and food production will be limited to fruit, veg, nuts, mushrooms. The aim of the coppice is to increase the sustainability of the business by producing wood for the garden plant growing operation, and to contribute to the revenue stream through the sale of raw material.
8. It is stated that the business is in year 2 of a 5-year plan (Phase 1: years 1-2) which involves setting up food production and growing infrastructure; The plan states that Phase 2 (years 3 to 5) would involve plant sale operations; and phase 3 is for year 6 onwards. Phase 1 has involved: 10 msq of test vegetable growing beds have been created; a 20 tree orchard was planted; 10 3m long soft fruit test beds; 5 hazel trees planted within the permanent tree area; A small greenhouse and cold frames for

propagation have been erected; 2 composting areas created; and a 2500 litre rainwater harvesting system fitted to the existing shed.

9. The business plan highlights that work is estimated to encompass a 240-day working year, and highlights that some work would be highly concentrated in the growing season and weekend work would be a necessity. It is estimated that daily tasks on the land (i.e. checking for pest damage, checking moisture levels of plants) would involve 1.5 hours per task, and weekly tasks would involve handling and dispatching customer orders and returns, delivering local orders and handling local pickups. However, the appellant has not provided any justification to demonstrate why it is essential for a worker to live on the site to support the needs of the enterprise, other than to state that close proximity affordable accommodation is important to the long term success of this business plan, improve efficiency and reduce costs.
10. It has not been demonstrated that it is essential, for the proper functioning of the enterprise, for one or more workers to be readily available at most times. Thus, my overall conclusion on the functional test is that, while there could be some benefits to the business for Mr Childs to live on the site, none of them (individually or cumulatively) provide an essential need for a worker to live on the site on a permanent basis. The proposal fails the functional test.

Financial test

11. The financial test should show that the enterprise concerned has been established for at least three years, profitable for at least one of them and both the enterprise and the business need for a job, is currently financially sound, and should have good prospects of remaining economically sustainable for a reasonable period of time, usually at least 5 years. Failure of the functional test leads to the conclusion that the proposed dwelling is contrary to policy and should be refused, regardless of any conclusions on the financial test. However, for completeness I have also considered that test.
12. The business plan states that year 1 investments have included fencing repair, drainage improvements, clearing work, tree planting, wildlife hedge creation, veg and fruit growing test area, greenhouse installation, trial compost and irrigation systems; and year 2 and 3 investments will cost £1,900. The appellant also provides evidence of cash reserves in the form of a statement dated 11 May to 10 June 2022 from his savings account showing a balance of over £20,000. The business plan sets out a 'yearly cost model' which lists a total target income of £21,710 and expected expenditure of £2,450 and states Pre-tax profits of £19,260. No justification has been provided to support these projections, and a detailed financial appraisal of the business providing historic information of past profit levels has not been evidenced in the form of audited accounts for Phase 1 (years 1-2). In addition, no financial projections have been provided for future years (Phases 2 and 3) based on Mr Child's own plan for growth of the business if he is able to live on the site and so be able to drive the business forward as he would wish.
13. It is clear that the business is very young and has not been established long enough to demonstrate that it has been established for at least 3 years and has been profitable for at least one of these years. Whilst Mr Child's aspirations are admirable, I can place little weight on the financial information/projections which have been provided. Accordingly, it cannot be justified that the business is financially sound and has a clear prospect of remaining so. Therefore, I conclude that the proposal fails to meet the financial test prescribed in TAN6.

Other dwellings test

14. Notwithstanding my findings on the functional and financial tests, TAN 6 refers to the 'other dwellings test'. The other dwellings test should identify whether there is an existing dwelling or building suitable for conversion on the enterprise or dwelling in the locality that could meet any identified functional need. Paragraph 6.1 of the Practice Guidance to TAN 6 clarifies that the onus is on an applicant to demonstrate that no reasonable alternative to a new dwelling is available.
15. The business plan sets out an 'accommodation plan' which states that the close proximity affordable accommodation is important to the long term success of the business plan; and longer term accommodation options are set out, including buying a new build house in the area, buying a small terraced house, renting locally or having a static caravan on site. The applicant acknowledges that these are potential options, but due to financial costs and other considerations the appellant is applying for permission to construct a new dwelling on the site.
16. Although being on one site would be preferable to the appellant, I am not convinced that a dwelling within a short distance of the land would make the business unviable. In any event TAN 6 makes it clear that whether it is essential in any particular case for rural enterprise workers to live at, or close to, their place of work will depend on the needs of the rural enterprise concerned and not on the personal preference or circumstances of any of the individuals involved. It also states in paragraph 4.6.2 that where the case is not completely proven for a dwelling, permission should not be granted for it, although it recognises that it may be appropriate to allow temporary accommodation for a limited period to allow the circumstances to be fully assessed. Nevertheless, the development before me is for a permanent dwelling and on the evidence, I am not satisfied that the functional need could not be fulfilled by other existing accommodation in the locality which is suitable and available for occupation by the appellant. The other dwellings test has therefore not been satisfied.

Other planning requirements

17. The other normal planning requirements test is required to demonstrate that the dwelling would be suitably located to fulfil its identified need and to minimise impact on the wider environment.
18. The site is located within open countryside and within the Pontygwaith Special Landscape Area (SLA4). The natural green and open characteristics of the site creates a strong boundary edge to this part of the settlement.
19. The proposed dwelling and driveway/parking area would, due to their elevated and prominent siting, be highly visible from the adjacent road and other public viewpoints. The development would introduce domestic activity into the site, in particular the parking of cars and locating domestic paraphernalia. Conditions could be imposed to restrict some forms of development which would otherwise be permitted, but the parking of cars at the site and the likely existence of domestic paraphernalia would be visible from outside of the site. In order to achieve the required vision splays, the hedge-line to the front of the dwelling would need to be set back or removed from the development to satisfy highway requirements. This would tend to jar within the landscape and detract from the open, verdant nature of the land. It would also be in marked contrast to the current character of the site which very obviously has no current domestic use and has largely blended into the wider landscape.

20. The presence of the dwelling, hardstanding/formal access and cars, light from the building and the activity from its occupation would all combine to significantly alter the character of the site. For the reasons set out above, I consider that the proposed development would have a significantly harmful effect on the character and appearance of the area and on the SLA, thus conflicting with Policy SW11 'Sustainable Design and Placemaking' and Policy EnW5 'Landscape Protection' of the LDP.

Nature Conservation

21. Having regard to the nature of the site, the proposal clearly has the potential to impact upon priority and protected species and/or their habitats. A Preliminary Ecological Appraisal (PEA) was submitted with the planning application, and this was assessed by the Council's ecologist. The Council's ecologist states that in considering the impact of the development on bats it is noted that the existing stable block has been assessed in the report as having negligible suitability for roosting bats, but questions whether this includes night roosting bats. In addition, insufficient information has been provided in the report to assess the impact of the proposal on reptiles and invertebrates.
22. The Council's ecologist also highlights that the site lies immediately adjacent to the Merthyr Vale Site of Importance for Nature Conservation (SINC), and although the PEA refers to this SINC there is no information presented regarding the potential impact on any other nearby locally designated sites, for example, there are at least 3 SINC's within 500m of the site. Additional information is also requested in connection to on-site lighting and the habitats which would be impacted by the proposed development. In conclusion, the Council's ecologist states that the PEA does not provide sufficient information to allow the local planning authority (LPA) to fully assess the potential ecological impacts of the proposed development, or to identify whether further survey work is required.
23. All native UK reptiles and all species of bat and their roosts are protected under the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010 (as amended). Paragraph 6.2.2 of Planning Policy Wales Technical Advice Note (TAN) 5 'Nature Conservation and Planning' indicates that any survey work that is required should be carried out before planning permission is granted where there is a reasonable likelihood of a protected species being present and affected, otherwise all relevant material planning considerations may not have been addressed in making the decision. TAN5 advises that planning permission should not be granted subject to a condition requiring a survey to be carried out.
24. On the basis of the information before me, including the appellant's PEA and the comments provided by the Council's ecologist, I find that there is insufficient evidence available to me to establish the potential impact of the scheme on biodiversity and ecology, including nearby SINC's. Mindful of the relevant national policy advice on protected species in TAN5, this is a matter that requires to be understood before planning permission is granted, rather than being addressed by planning condition.
25. I find that the circumstances of this case justifies a precautionary approach, in order to avoid potentially harmful impact on protected species which would conflict with Policy EnW1 of the LDP.

Conclusions

26. Having regard to the above and considered all other matters raised, I conclude that the appeal should be dismissed.
27. 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

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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