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## Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 20/06/17

Ymweliad â safle a wnaed ar 20/06/17

**gan Joanne Burston BSc MA MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 17.07.2017**

## Appeal Decision

Hearing Held on 20/06/17

Site visit made on 20/06/17

**by Joanne Burston BSc MA MRTPI**

**an Inspector appointed by the Welsh Ministers**

**Date: 17.07.2017**

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**Appeal Ref: APP/T6850/A/17/3168479**

**Site address: VLF Building, Criggion Radio Station, Back Lane, Criggion, Welshpool SY5 9BE**

**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 Chris Moore against the decision of Powys County Council.
  - The application Ref P/2015/0535, dated 18 May 2015, was refused by notice dated 19 October 2016.
  - The development proposed is the change of use conversion of former VLF building to dwelling.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Hearing an application for costs was made by Mr Chris Moore against Powys County Council. This application is the subject of a separate Decision.

### Procedural Matters

3. 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 ("the WCFG Act"). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WCFG Act and I consider that this decision is consistent with the sustainable development principle as required by section 8 of the WCFG Act.
4. Subsequent to the close of the Hearing the appellant submitted a signed and dated Deed in accordance with Section 106 of the Town and Country Planning Act 1990. I return to this matter later in this decision.

### Main Issues

5. The main issues in this case are:
    - The effect on flood risk;
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- Whether the proposed development would provide acceptable living conditions for future occupiers; and
- Mineral resources.

## Reasons

6. Planning Policy Wales, Edition 9 (PPW), Chapter 13, aims to minimise and manage environmental risks and pollution and contains relevant policies on flood risk. Paragraph 13.2.3 expresses the basic principle of the policy *"Meeting the Welsh Government's objectives for sustainable development requires action through the planning system to move away from flood defence and the mitigation of the consequences of new development in areas of flood hazard towards a more positive avoidance of development in areas defined as being of flood hazard"*.
7. The site lies some 300 metres to the west of the River Severn and is at risk of fluvial flooding. It lies within Flood Zone C2 as defined on the Development Advice Maps (DAMs) that accompany the Welsh Government's Technical Advice Note 15, Development and Flood Risk (TAN15). Flood Zone C2 is defined as areas of the floodplain without significant flood defence infrastructure, and TAN15 prescribes that "highly vulnerable development", which includes all residential premises, should not be permitted in such zones. Thus the proposal is contrary to the principles of this national policy.
8. The Appellant has submitted a Flood Consequences Assessment (FCA) to support the application and this has generally been accepted by Natural Resources Wales (NRW). It includes mitigation measures to reduce the effects of flooding should the development go ahead. Measures include raising the finished floor level so that the building would be free from flood in an extreme flood event and that the use of the ground floor would be for a garage and storage only.
9. However, as set out in TAN15, even with adequate mitigation measures in place it may still not be sensible to allow particular development to take place where safe access or egress may be compromised. NRW state that *"the flood depths along the preferred access route could be in excess of 600mm with velocities in excess of 1.5m/s<sup>1</sup>. In terms of Flood Hazard Ratings, this would cause a danger for most.... A highly vulnerable development in a flood risk area is contrary to TAN 12 and will rely on able occupants to prepare, operate and maintain a suitable management plan"*.
10. Thus, although raised floor levels and other measures could reduce effects on the dwelling itself, in such an extreme event the house would be surrounded by deep, fast flowing water, in excess of the criteria in TAN15 for property access.
11. The appellant states that flood warnings are provided by NRW for the River Severn at Criggion and due to the size of the catchment there would be sufficient lead times to allow action to be undertaken by the residents of the proposed development to evacuate the area. However, if this was not possible residents would be able to use the building as a safe refuge. This information would be contained in a Flood Emergency Plan and notified to all future occupiers as part of the deeds.

<sup>1</sup> The Appellant's Addendum to FCA Report states that: Mean flood depths along the evacuation route for the 1:100 year+CC and 1:1000 year events are 0.30 m and 0.42 m, while maximum depths are 0.68 m and 0.82 m, respectively. Mean velocities are 0.45 m/s and 0.51 m/s for the 1:100 year+CC and 1:1000 year flood events, while maximum velocities are 1.63 m/s and 1.73 m/s, respectively.

12. I do not doubt the value of Flood Emergency Plans. Although the availability of flood warnings and evacuation plans are one of the considerations to ensure that any new development is safe, these are dependent on human action and compliance. Failings and errors can and do occur including illness, accidents, delayed departure, unexpected and dramatic changes in the conditions and natural personal reluctance to move out rapidly. I am mindful that such events can occur at night, when most people are asleep, and this would make contact and response difficult. The Council also refers to the difficulty of enforcing a flood evacuation plan. Given the predicted speed and depth of future flooding I consider that this would also place residents in considerable danger. The risk that it could present to the emergency services were they obliged to attempt rescue cannot be overlooked. As such I do not consider that flood warnings and evacuation plans on their own, during the period when extreme flood events are more likely would manage flood risk so that the development would remain safe throughout its lifetime.
13. The appellant has made reference to another development close to the appeal site, which has been referred to as 'The Parochial School'. I saw the development on my site visit, which I accept is in close proximity to the watercourse. However, it was clear that the site has a different context to that of the appeal site, being a listed building, and therefore is not directly comparable. In any event, I am mindful that each proposal should be considered on its own merits.
14. Having considered the detailed measures in the FCA and other information submitted by the appellant, I am not satisfied that the proposal fully addresses the flood risk implications of the scheme, and meets the requirements of National Policy in this regard. The proposal is also contrary to the Powys Unitary Development Plan (UDP) Policy SP14 which sets out, amongst other matters, that highly vulnerable development will not be permitted in Zone C2.

#### *Living Conditions*

15. The appeal site is located approximately 120 metres to the west of Criggion Quarry, which is a large mineral extraction site, with associated processing facilities and asphalt plant. The planning permission for the quarry permits it to operate 7 days a week, with the only time constraints limiting vehicles over 1 tonne in weight entering or leaving the quarry and on blasting. The quarry and associated operations are set above the appeal site, extracting stone from the hillside. There is therefore significant potential for noise and disturbance from mineral operations and transportation.
16. Technical Advice Note 11: Noise (TAN11) states that "*local planning authorities should consider whether proposals for new noise-sensitive development would be incompatible with existing activities, taking into account the likely level of noise exposure at the time of the application and any increase that may reasonably be expected in the foreseeable future. Such development should not normally be permitted in areas which are, or are expected to become, subject to unacceptably high levels of noise and should not normally be permitted where high levels of noise will continue throughout the night*".
17. UDP Policy GP1 (3) states that, amongst other matters, the amenities enjoyed by the occupants of nearby or proposed properties shall not be unacceptably affected by levels of noise. Moreover, UDP Policy MW22 establishes that all proposals that are likely to be incompatible with the adjacent minerals working will form the subject of rigorous examination.

18. The appellant states, and the Council do not disagree, that the minimum noise attenuation required is 20dB, in order to achieve the recommended internal daytime and night-time noise limits of 35dB and 30dB respectively. From the evidence before me, including the appellant's acoustic reports, the proposed development will comprise 480mm thick solid masonry walls, lined internally with insulation and plasterboard. Furthermore, the glazing units on the rear elevation will be non-opening. Given these mitigating measures I am satisfied that the building would achieve acceptable internal daytime and night-time noise level limits, thus making it suitable for residential occupation.
19. Nonetheless, the proposed development also benefits from a large area of outdoor living space, both to the front and rear of the property. The noise measurements taken by both the appellant and the Council highlight, by reference to table 4.1 in 'World Health Organisation guidelines for Community Noise in specific environments' that at certain hours of the day and night the range of noise would be in excess of 50dB LAeq and 55dB LAeq thus causing respectively moderate annoyance and serious annoyance.
20. Moreover, whilst the Quarry operator had confirmed that the day of the survey was 'typical', quarry operations can vary from day to day and a noise survey limited to only one day does not provide a convincing picture of the noise emanating from the quarry. Additionally, as I was told at the Hearing, the mineral extraction operations are phased to move closer to the appeal site, which will impact on the noise environment hereabouts.
21. I accept that limiting the extent of the residential curtilage to include only the front garden, through a Section 106 Agreement, would reduce noise disturbance to a degree. However, I remain concerned that given the proximity of the quarry to the proposed development and that noise from quarry operations would be difficult to mitigate, the living conditions of future occupiers would be significantly affected.
22. Therefore, based upon the evidence before me, it has not been demonstrated that the proposed mitigation measures overcome the significant risk of noise and disturbance to future occupiers of the proposed development arising from the neighbouring quarry activities. The proposed development is therefore contrary to the Powys Unitary Development Plan (UDP) Policies GP1 and MW22.

#### *Mineral resources*

23. Criggion Quarry produces high polished stone value dolerite, one of only a handful of sites in the country. The stone is mainly used in the road construction industry as an anti-skid top dressing. The quarry is an important producer both locally and nationally. Minerals Technical Advice Note 1: Aggregates 2004 (MTAN1) establishes at paragraph 31 that "*Wales has a plentiful supply of hard rock resources but it is still a fundamental objective to conserve natural resources for their intrinsic qualities and possibly for future generations to exploit, particularly those in relatively short supply. These include resources suitable for use as road surfacing materials with high skid resistance.*"
24. In order to ensure that the hard rock supply in Powys is not prejudiced by the introduction of new uses in close proximity to existing quarries UDP Policy MW22 states that a 'buffer zone' should be established for all authorised mineral workings with an expected life of five years or more. The appeal site is situated within the buffer zone of Criggion Quarry.

25. Chapter 14 of PPW states at paragraph 14.4.1 that *“there is often conflict between mineral workings and other land uses as a result of the environmental impact of noise and dust from mineral extraction and processing and vibration from blasting operations. Buffer zones have been used by mineral planning authorities for some time to provide areas of protection around permitted and proposed mineral workings where new development which would be sensitive to adverse impact, including residential areas, hospitals and schools, should be resisted. Within the buffer zone there should be no new mineral extraction or new sensitive development, except where the site of the new development in relation to the mineral operation would be located within or on the far side of an existing built up area which already encroaches into the buffer zone. Other development, including industry, offices and some ancillary development related to the mineral working, which are less sensitive to impact from mineral operations may be acceptable within the buffer zone.”* This advice is also reiterated in Minerals Technical Advice Note 1: Aggregates 2004 (MTAN1).
26. If granted planning permission, it would be likely that the appeal property would remain in residential use for a long time. It is difficult to foresee the long term economic demand for, and supply of, crushed rock, and so current operations at the quarry are not much help in predicting the likelihood that extraction and associated activities may or may not increase in the future. What is relevant in this case is that it is a known mineral resource, which might be needed. Moreover, I consider that it is a mineral resource that should be safeguarded, and that reasonable measures to prevent its sterilisation would be justified.
27. Whilst the economic argument might not be convincing, I do not underestimate the pressure that future occupiers of a new dwelling could bring on the quarry, by complaints and other action, to restrict operations that they perceived had an unacceptable adverse effect on their living conditions. This could also effectively sterilise the mineral resource.
28. Taking into account the separation distance and the nature of the quarrying operation, I consider that a change of use to residential could result in the unnecessary sterilisation of a potentially useful mineral resource. Therefore the proposal would be contrary to UDP Policy MW22, MTAN1 and PPW as set out above.

#### *Other matters*

29. The appeal building has an interesting history as part of the military command, control and communication system from the Second World War onwards. In a letter, dated 29 May 2015, Cadw provide a draft description, setting out its preliminary assessment for the building (Doc 05). The draft description provides for a grade II listing, *“included for its special architectural interest as part of a rare surviving example of a military radio station... The site at Criggion is unique in Wales and is one of only a small number of such stations within the UK.”*
30. The historic importance of the building is acknowledged, however it has not yet been listed. Therefore whilst the appeal proposal may provide long term security for the building, I have no evidence that the building is at risk or that the appeal proposal is the only solution to secure its future. Therefore, this matter does not outweigh my concerns set out above.
31. The provision of a planning obligation to control the use of the land to the rear of the appeal building was discussed at the Hearing. Subsequently a completed Deed dated 28 June 2017 was submitted. However, for the reasons outlined above, such

provision would not outweigh my concerns in relation to the appeal scheme. Thus, the Deed has had little bearing upon my decision.

32. I was referred to other rural properties which have been granted permission for residential and commercial uses. However, much depends on the particular circumstances in each case. There is nothing to indicate that these properties are directly comparable to the circumstances that apply in the appeal before me.

### **Conclusion**

33. For the reasons given above and having regard to all matters raised, I conclude that the appeal should be dismissed.

*Joanne Burston*

INSPECTOR

### **APPEARANCES**

#### FOR THE APPELLANT:

Mr R Lewis	Agent, Hughes Architects
Mr C Moore	Appellant
Mr A Paddison	Consultant
Mr P Keeling	Managing Director, The Studio People
Mr C Smout	Consultant, The Studio People

#### FOR THE COUNCIL:

Ms T Law	Principal Planning Officer, Powys County Borough Council
Mr C Jones	Senior Environmental Health Officer, Powys County Borough Council
Mr G Nancarrow	Manager (Minerals and Waste), Flintshire County Council

#### DOCUMENTS SUBMITTED DURING THE HEARING

Doc 01	Notification Letter, submitted on behalf of the Council.
Doc 02	Application for Costs, submitted by the appellant.
Doc 03	Committee Report, ref: P/2015/1085, submitted by the appellant.
Doc 04	Flood Risk Maps for P/2015/1085 site, submitted by the appellant.
Doc 05	Letter from Cadw, dated 29 May 2015, submitted by the appellant.