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PLANNING, TAXI LICENSING & RIGHTS OF WAY COMMITTEE Thursday, 2nd May, 2019

The use of Welsh by participants is welcomed. If you wish to use Welsh please inform us by noon, two working days before the meeting

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To receive the Planning Inspector's decision regarding an appeal.
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Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 12/03/19

gan **Richard E. Jenkins BA (Hons) MSc MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 26.04.2019

Appeal Decision

Site visit made on 12/03/19

by **Richard E. Jenkins BA (Hons) MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 26.04.2019

Appeal Ref: APP/T6850/A/18/3218342

Site address: Land at Cefn Llan, Llangammarch Wells

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 consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Mr Parry of Butler Wall Homes against the decision of Powys County Council.
- The application Ref: P/2018/0315, dated 8 March 2018, sought approval of details pursuant to condition No.1 of a planning permission Ref: P/2017/0823, granted on 15 February 2018.
- The application was refused by notice dated 25 September 2018.
- The development proposed is the application of reserved matters following outline approval P/2017/0823 for the erection of 25 dwellings, 7 garages, access road and all associated works.
- The details for which approval is sought are: appearance, landscaping, layout and scale.

Decision

1. The appeal is allowed and planning permission is granted for reserved matters following outline approval P/2017/0823 for the erection of 25 dwellings, 7 garages, access road and all associated works at Land at Cefn Llan, Llangammarch Wells in accordance with the terms of the application, Ref: P/2018/0315, dated 8 March 2018, subject to the conditions set out in the attached schedule.

Application for an Award of Costs

2. An application for costs was made by Mr Parry of Butler Wall Homes against Powys County Council. This application is the subject of a separate Decision.

Procedural Matters

3. I have taken the description of development from the Council's Notice of Decision as it provides a more accurate description than that outlined on the original planning application form. As the amended description is consistent with that outlined on the Appeal Form, I am satisfied that there would be no prejudice in this respect.

Main Issue

4. The main issue in this case is whether the scale of development is acceptable in principle, having particular regard to the planning policy framework and other material planning considerations.

Reasons

5. The appeal relates to an agricultural field located on the northern outskirts of Llangammarch Wells in Powys. The site was originally identified as a residential allocation in the adopted Powys Unitary Development Plan 2001- 2016 (hereinafter referred as the UDP) and was granted outline planning permission, under Ref: P/2008/0402, for residential development and the construction of a vehicular access in 2014 (hereinafter referred as the 2014 permission). The proposed Site Plan, stamped as approved under that 2014 permission, included a site layout appearing to comprise 25No. residential plots, although the appellant contends that it illustrates 26No. plots. Whilst not marked as such, I have been informed that the Site Plan was indicative, although the Officer's Report associated with the current proposal states that the 2014 permission was indeed for 25No. dwellings and the construction of a vehicular access. In light of such evidence, it is notable that the permission was not subject to a planning condition that restricted the number of residential units on site.
6. A planning application for the construction of 30No. residential dwellings at the site was subsequently submitted, under Ref: P/2016/0795, and refused by the Local Planning Authority (LPA) on the basis that the scale and density of the development would not be in keeping with the character of Llangammarch Wells (hereinafter referred as the 2017 refusal). Nevertheless, a Section 73 application, with Ref: P/2017/0823, was subsequently approved by the LPA for the variation of Condition No.2 of the aforementioned 2014 permission to extend the time limit for submission of reserved matters for a further two years (hereinafter referred as the 2017 permission). The commentary on the requirement for a Section 106 agreement under the Officer's Report associated with that 2017 permission appears to make reference to the application as being for 16 dwellings¹. However, there is nothing to explain that the application differed in terms of the number of dwellings from that permitted in 2014. Indeed, the 2017 permission clearly stemmed from a Section 73 application that related solely to Condition No.2 of the 2014 permission and, in this respect, I consider the 2017 permission to be identical to that permitted in 2014 save for the time period for submission of reserved matters. It is also notable that the 2017 permission was also not subject to a planning condition that restricted the number of dwellings on site.
7. The current proposal seeks to discharge the reserved matters following the planning permission granted in 2017. The LPA refused to discharge the reserved matters on the basis that the scale of the proposed development would result in the capacity of Llangammarch Wells being significantly exceeded. That decision was made contrary to the professional advice of its officers and despite the fact that the Officer's Report advised the members that the application related to an extant outline planning permission for 25No. dwellings. The LPA has chosen not to submit a Statement in support of its case, although the minutes of the relevant *Planning, Taxi, Licensing and Rights of Way Committee* have been provided. Those minutes are however limited to the following: "*Several Members queried why approval was being recommended when 25 dwellings were proposed for the site when the UDP and the LDP referred to 16 dwellings on the site. Officer advised that these figures were for guidance only. It was moved and duly seconded that the application be refused on the grounds that number of dwellings proposed meant that the scale of development was too big for Llangammarch Wells*".

¹ Page 8, Section 106 Agreement

8. The site currently comprises an allocation in the adopted Powys County Council Local Development Plan 2011- 2026 Written Statement (adopted 2018) (hereinafter referred as the LDP), which superseded the previous UDP as the adopted development plan for the area in 2018. As with the former UDP, I am advised that the LDP residential allocation is identified for approximately 16No. dwellings although, as the Council's professional officers advised the members of the above Committee, that figure should be treated as indicative only. I have not seen anything to lead me to question the soundness of such advice, not least because it is well-established that a development plan allocation only sets out the principle of the specific land-use, with exact details to be determined through development management processes.
9. Within this context, I do not consider the LPA's contention that the development should be limited to a maximum of 16No. residential dwellings to be well-founded. Indeed, the evidence is clear that the 2014 permission, and therefore the subsequent Section 73 application in 2017, considered a scheme for residential development at or above that proposed in this case. Furthermore, the Council's own adopted LDP seeks to deliver a new build housing density of approximately 20- 25 dwellings per hectare². The appellant contends that the site is approximately 1.5 hectares in area but, even utilising the LPA's more conservative estimate of 1.31 hectares, it would appear that the development proposed in this case would, whilst being broadly compliant with the Council's own density parameters, represent a relatively low density.
10. I have considered the wider concerns raised in relation to the capacity of Llangammarch Wells and the scale of the development relative to the availability of facilities and services within the area. However, such concerns remain largely unsubstantiated by cogent evidence, with nothing submitted to demonstrate that the impacts of 25No. dwellings at the appeal site would be materially different to that of 16No. dwellings. I have also not seen anything to indicate that the proposed development would not have suitable regard to its local context. Indeed, the scheme would provide for a mix of dwelling types and be of suitable design, thus broadly satisfying the requirements of Policies H3, H4 and DM13 of the adopted LDP.
11. The other constraints sited, including those relating to highway matters, flooding and drainage remain largely unfounded, particularly given the potential for such matters to be addressed through the imposition of suitably worded planning conditions. I note the representations relating to the development in the nearby village of Beulah. However, it is a well-established principle of planning that each case should be treated on its own particular merits and I have not seen anything relating to that development that renders this proposal unacceptable. Similarly, evidence relating to the market for the proposed dwellings is largely anecdotal and should not be treated as determinative, particularly given the substantial weight that should be attached to the fact that the principle of development has already been firmly established.
12. Based on the foregoing I find the principle of the development proposed to be both acceptable and consistent with the associated outline consent. I therefore find no conflict with Policy DM13 of the adopted LDP or the provisions of national policy set out in Planning Policy Wales (Edition 10, 2018) (PPW). For these reasons, and having considered all matters raised, I conclude that the appeal should be allowed subject to the conditions set out in the attached schedule. In coming to this conclusion, 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 (WCFG Act). I

² Policy H4: *Housing Density*

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.

13. I have considered the suggested conditions and, having had regard to the advice in Welsh Government Circular 16/2014: *The Use of Planning Conditions for Development Management* (October 2014), have adjusted their wording in the interest of clarity and precision. The reasons for the imposition of each of the planning conditions is set out in the schedule of decisions attached to this decision. The LPAs suggested Condition Nos.1, 6 and 20 are not necessary given that such requirements represent a duplication of the controls set out in the outline planning permission granted under Ref: P/2017/0823 and suggested Condition No.18 would be covered by separate conditions and/or other legislation. Suggested Condition Nos. 22 and 23 are duplicates of other conditions imposed below and are not therefore necessary.

Richard E. Jenkins

INSPECTOR

Schedule of Conditions

- 1) The development shall be carried out in accordance with the following approved plans: TDA.2198.03, PSPB01A, ESPB01A, GB01, PSVB01, PSVB02, PSVB03, PSVB04, LPB01 A, 150, 160, 162, 161, 231, 200, 163, Drainage Strategy, U01 02, U01 01, U02+03 02, U02+03 01, U04+05 02, U04+05 01, U06-08 02, U0608 01, U09 02, U09 01, U10 02, U10 01, U11 02, U11 01, U12 02, U12 01, U13 02, U13 01, U14 02, U14 01, U15+16 02, U15+16 01, U17 02, U17 01, U22 02, U22 01, U21 02, U21 01, U19+20 02, U19+20 01, U18 02, U18 01, U23 02, U23 01, U24 02, U24 01, U25 02 & U25 01.

Reason: *To ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with the application.*

- 2) Prior to the construction of the dwellings hereby approved details and/or samples of the materials to be used in the construction of the external surfaces of the dwellings shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Reason: *To ensure that the development hereby permitted does not have a detrimental impact on the character and appearance of the area.*

- 3) Prior to commencement of development, a Landscaping and Management Plan shall be submitted to and agreed with the Local Planning Authority. The Plan shall be implemented in the first planting season following occupation of the development. The Plan shall include the use of native species, details of the planting specification - the species, sizes and planting densities - and a timetable for implementation and future management to ensure good establishment and long-term retention.

Reason: *To ensure that the development hereby permitted does not have a detrimental impact on the character and appearance of the area.*

- 4) Prior to commencement of development a Tree and Hedgerow Protection Plan in accordance with BS:5837:2012 shall be submitted to the Local Planning Authority. The Plan shall be implemented as approved and the trees and hedgerows maintained thereafter unless otherwise agreed in writing with the Local Planning Authority.

Reason: *To ensure that the development hereby permitted does not have a detrimental impact on the character and appearance of the area.*

- 5) No other development shall commence until the access has been constructed so that there is a clear visibility from a point 1.05 metres above ground level at the centre of the access and 2.4 metres distant from the edge of the adjoining carriageway, to points 0.6 metres above ground level at the edge of the adjoining carriageway and 70 metres distant in a northerly direction and 43 metres in a southerly direction measured from the centre of the access along the edge of the adjoining carriageway. Nothing shall be planted, erected or allowed to grow on the area(s) of land so formed that would obstruct the visibility and the visibility shall be maintained free from obstruction for as long as the development hereby permitted remains in existence.

Reason: *In the interest of pedestrian and highway safety.*

- 6) Upon formation of the visibility splays as detailed above, the centreline of any new or relocated hedge should be positioned not less than 1.0 metre to the rear of the

visibility splay and retained in this position as long as the development remains in existence.

Reason: *In the interest of pedestrian and highway safety.*

- 7) No other development shall commence until the area of access to be used by vehicles is to be constructed to a minimum of 410mm depth, comprising a minimum of 250mm of sub-base material, 100mm of bituminous macadam base course material and 60mm of bituminous macadam binder course material for a distance of 10 metres from the edge of the adjoining carriageway.

Reason: *In the interest of pedestrian and highway safety.*

- 8) The gradient of the access shall be constructed so as to not exceed 1 in 30 for the first 10 metres measured from edge of the adjoining carriageway along the centre line of the access and shall be retained at this gradient for as long as the development remains in existence.

Reason: *In the interest of pedestrian and highway safety.*

- 9) The centre line of the first 10 metres of the access road measured from the edge of the adjoining carriageway shall be constructed at right angles to that edge of the said carriageway and be retained at that angle for as long as the development remains in existence.

Reason: *In the interest of pedestrian and highway safety.*

- 10) Prior to the occupation of any dwelling, provision shall be made within the curtilage of each respective plot for the parking of cars in accordance with the approved Proposed Site Plan. The parking areas shall be retained for their designated use in perpetuity.

Reason: *In the interest of pedestrian and highway safety.*

- 11) The gradient from the back of the footway/verge to the vehicle parking areas shall be constructed so as not to exceed 1 in 15 and shall be retained at this gradient for as long as the dwellings remain in existence.

Reason: *In the interest of pedestrian and highway safety.*

- 12) Prior to the occupation of any dwelling, a 2 metre wide footpath shall be provided along the frontage of the site onto the existing county C0029 road and shall be retained as such for as long as the development hereby permitted remains in existence.

Reason: *In the interest of pedestrian and highway safety.*

- 13) No building shall be occupied before the estate road carriageway and footway have been constructed, to and including binder course level to an adoptable standard, including the provision of any salt bins, surface water drainage and street lighting in front of that building and to the junction with the county highway.

Reason: *In the interest of pedestrian and highway safety*

- 14) The estate road carriageway and all footways shall be fully completed, in accordance with the details and timings to be agreed in writing by the Local Planning Authority. The agreed standard of completion shall be maintained for as long as the development remains in existence.

Reason: *In the interest of pedestrian and highway safety.*

- 15) Prior to the occupation of any dwelling, the area of the access to be used by vehicles is to be finished in a 40mm bituminous surface course for a distance of 10 metres from the edge of the adjoining carriageway. This area will be maintained to this standard for as long as the development remains in existence.

Reason: *In the interest of pedestrian and highway safety.*

- 16) The area of each private drive and any turning area is to be metalled and surfaced in bituminous macadam, concrete or block pavements, prior to the occupation of that dwelling and retained for as long as the development remains in existence.

Reason: *In the interest of pedestrian and highway safety.*

- 17) Prior to the commencement of development, full engineering drawings, to include detailed cross sections through any structure and the works adjacent to the existing C0029 county highway shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details of construction.

Reason: *In the interest of pedestrian and highway safety.*

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Penderfyniad ar gostau

Ymweliad â safle a wnaed ar 12/03/19

gan **Richard E. Jenkins BA (Hons) MSc MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 26.04.2019

Costs Decision

Site visit made on 12/03/19

by **Richard E. Jenkins BA (Hons) MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 26.04.2019

Costs application in relation to Appeal Ref: APP/T6850/A/18/3218342

Site address: Land at Cefn Llan, Llangammarch Wells

The Welsh Ministers have transferred the authority to decide this application for costs to me as the appointed Inspector.

- The application is made under the Town and Country Planning Act 1990, sections 78, 322C and Schedule 6.
 - The application is made by Mr Parry of Butler Wall Homes for a full award of costs against Powys County Council.
 - The appeal was against the refusal of planning permission for reserved matters following outline approval P/2017/0823 for the erection of 25 dwellings, 7 garages, access road and all associated works.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Welsh Government (WG) guidance relating to an award of costs, in the form of the WG Development Management Manual (DMM) and the associated Section 12 Annex: *Award of Costs* (May 2017) (Annex 12), advises that irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for an award of costs to incur unnecessary or wasted expense in the appeals process.
3. In this case, the Local Planning Authority (LPA) refused the application on the basis that the scale of the development proposed would result in the capacity of Llangammarch Wells being significantly exceeded, despite the fact that the scale of development had been considered and firmly established through the grant of outline planning permission in 2014 and again subsequently following an application under Section 73 of the Act¹. I note the contention that the LDP residential allocation at the site relates to 16No. residential dwellings. However, the members of the *Planning, Taxi, Licensing and Rights of Way Committee* were advised that such a figure should be treated indicatively and failed to adequately explain why it considered such a matter to outweigh the extant planning permission.
4. Notwithstanding such matters, the LPA provided no evidence to demonstrate why the provision of 16No. residential dwellings would be materially less harmful than the 25No. dwellings proposed in this case, despite the fact that the development would be

¹ Application Ref: P/2017/0823

broadly compliant with the density requirements advocated by the Council's own adopted Local Development Plan 2011- 2026 Written Statement (adopted 2018)(LDP).

5. I therefore find the LPA to have behaved unreasonably, as defined by Annex 12 of the WG's DMM. Given that such behaviour led to unnecessary expense through the appeals process, it follows that a full award of costs is justified. For these reasons, and having considered all matters raised, I conclude that the application for an award of costs should be allowed.

Costs Order

6. In exercise of the powers under section 322C and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, it is hereby ordered that Powys County Council shall pay to Mr Parry of Butler Wall Homes, the costs of the appeal proceedings described in the heading of this decision.
7. The applicant is now invited to submit to Powys County Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, an application for a detailed assessment by the Senior Courts Costs Office should be considered.

Richard E. Jenkins

INSPECTOR