



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 04/01/19

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

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 04.02.19

Appeal Decision

Site visit made on 04/01/19

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

an Inspector appointed by the Welsh Ministers

Date: 04.02.19

Appeal Ref: APP/T6850/A/18/3214518

Site address: Ty Brith, Bwlch-y-Ddar, Llangedwyn, Oswestry, SY10 9LL

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 Llangedwyn Estate against the decision of Powys County Council.
 - The application Ref: P/2017/0098, dated 14 December 2016, was refused by notice dated 26 April 2018.
 - The development proposed is the erection of a replacement dwelling on land at Ty Brith, Bwlch-y-Ddar to include access, foul system and soak away.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a replacement dwelling to include access, foul system and soak away at Ty Brith, Bwlch-y-Ddar, Llangedwyn, Oswestry, SY10 9LL in accordance with the terms of the application Ref: P/2017/0098, dated 14 December 2016, subject to the conditions set out in the attached schedule.

Procedural Matter

2. I have taken the site address from the Appeal Form given that it is more accurate than that described on the application form. As the address referred on the Appeal Form is broadly consistent with that described on the Council's Notice of Decision I am satisfied that there is no prejudice in this respect.
 3. The LPA's Committee resolved to refuse the planning application on the basis of the policies set out in the then adopted Powys County Council Unitary Development Plan (UDP) although the Local Planning Authority's (LPA) Notice of Decision relates to policies of the Powys Local Development Plan 2011- 2026 (adopted 2018) (LDP). As the LDP currently forms the adopted development plan for the area it is this document that I shall use in the determination of this appeal. There is no prejudice in this respect, not least because there has been ample opportunity for such matters to have been raised through the appeal process.
 4. During the processing of the appeal, I sought clarification from the LPA with regards to the Plans used in the determination of the planning application. For the avoidance of any doubt, and in the interest of fairness, I have determined the appeal on the same basis.
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Main Issues

5. These are: whether the development is acceptable in principle, having particular regard to the development plan framework and other material considerations; and the effect of the proposed development upon the character and appearance of the area.

Reasons

6. The appeal proposal seeks full planning permission for a replacement dwelling that would effectively result in the loss of the existing dwelling at Belan Einion and the construction of a new dwelling approximately 1 kilometre away. The appeal site therefore comprises two separate parcels of land, both of which are owned by the appellant and form part of the red line delineated on the Site Plan that accompanies the proposal.
7. The existing dwelling at Belan Einion comprises an isolated stone property accessed via a rough agricultural access track that runs for a significant distance along a relatively steep gradient. The Council is satisfied that this property comprises a lawful dwelling, with no evidence to suggest that the residential use of the property has been abandoned. It was however notable at the time of my site inspection that the property is currently in a poor state of repair. The proposed replacement dwelling meanwhile, would comprise a two storey detached dwelling that would be located within the garden area of an existing dwelling known as Ty Brith in Bwlch-y-Ddar. The dwelling would be double fronted, partially clad in stone and incorporate a natural slate roof. Access would be achieved off the existing highway, with sufficient room for the provision of off-road parking.
8. Belan Einion is located in the 'Open Countryside', as defined by the adopted LDP, isolated from the adopted highway and other developments. The proposed replacement dwelling would be located a significant distance away in Bwlch-y-Ddar. The evidence indicates that Bwlch-y-Ddar was classified as a 'Rural Settlement' in the former UDP, although the Council has since clarified that it comprises 'Open Countryside' for the purposes of the adopted LDP by reason of the fact that it does not incorporate a group of 10 dwellings as per the requirements of Policy SP5. Policy SP6 states that only housing that complies with national exceptions policies as set out in Planning Policy Wales (Edition 10, 2016) (PPW) and Technical Advice Note 6: *Planning for Sustainable Rural Communities* (2010) (TAN6) will be permitted in the 'Open Countryside'. PPW does not preclude replacement dwellings and, in this respect, I am satisfied that the principle of a replacement dwelling in the 'Open Countryside' is therefore compliant with the overall strategy advocated by Policies SP5 and SP6.
9. Notwithstanding such an assessment, Policy H9 of the adopted LDP sets the specific policy context for replacement dwellings. In terms of its requirements, criterion 1 clarifies that the residential use of the property must not have been abandoned, whilst criterion 2 requires that proposals should not result in the loss of a building of special architectural or historic interest or local vernacular character. Where the proposal would result in the loss of such a building, it would need to be proven that the building is beyond realistic repair. Criterion 3(i) requires that replacement dwellings must be located within or adjacent to the footprint of the former habitable dwelling and reflect the form, size and scale of the former habitable dwelling unless there are demonstrable planning advantages to be gained from deviating from its orientation, position or size. Criterion 3(ii) requires that the proposed dwelling must respect or enhance the design of the original dwelling and those in the wider locality.

10. I have already set out above that the residential use of Belan Einion is not in dispute and I have no reason to disagree with such matters. Criterion 1 is therefore satisfied. The building is not listed, although I concur with the LPA's heritage officer that the building is a good example of local vernacular. I have already set out above that the property was in a poor state of repair at the time of my site visit, although I have not seen any conclusive evidence that the building is beyond realistic repair. The cost of such repairs would be significant however, whilst the provision of reasonable access arrangements would also involve substantial expense. Nevertheless, as the proposal before me is for Belan Einion to be retained without a residential use, as opposed to its demolition, the development would not result in the loss of local vernacular.
11. In terms of criterion 3(i), the proposed replacement dwelling would be located a significant distance from the footprint of Belan Einion. As such, in order to be policy compliant, planning advantages need to be demonstrated to justify the deviation from such a default policy position. It is common ground that Belan Einion is set in a secluded location, not accessible by a typical private car. It was also evident at the time of my site visit that whilst the site is accessible by foot, given the distances and topography of the area, such an option remains impracticable for typical day to day living. In contrast, whilst located in the 'Open Countryside' for planning policy purposes, the proposed replacement dwelling would be constructed on land that comprises part of the garden of Ty Brith which is located within a largely built up area of Bwlch-y-Ddar. As such, and bearing in mind the ease of access that could be achieved at the site at Ty Brith, I consider that the development would offer improved sustainability credentials and represent a clear and obvious improvement in terms of highway safety. Indeed, despite the limited services at Bwlch-y-Ddar, the site of the proposed dwelling would provide easier access to the facilities and services at the 'Large village' of Llanfechain and the 'Small Village' of Llangedwyn which include places of worship, a school and retail offerings. It would also provide more convenient access to the 'Town' of Llanfyllin which provides a wide range of facilities and services. Such considerations clearly amount to significant planning advantages.
12. In terms of the policy test set by criterion 3(ii), it is notable that the Council objects to the proposed development on the basis that it would have an unacceptable landscape and visual impact. I have already set out above that both the appellant and the LPA have clarified their preference for Belan Einion to be retained, without a residential use, rather than the property being completely demolished. I cannot therefore find that the proposed development would have an overall positive impact on the wider landscape. Nevertheless, I concur with the delegated officer's opinion that the replacement dwelling would be relatively well-integrated into the settlement of Bwlch-y-Ddar. Moreover, having had regard to the siting, scale, form and overall design of the proposed dwelling, coupled with the prevailing topography of the area, I am satisfied that the development would not have a material adverse impact on the landscape and neither do I consider that it would detract from the wider character and appearance of the area.
13. I have considered all other matters raised, including the effect upon the living conditions of the occupiers of neighbouring residential properties and the loss of views. However, by virtue of the combination of the prevailing topography of the area and the siting, scale and overall design of the dwelling, I do not consider that the development would cause material harm by loss of privacy, outlook or natural light. Moreover, there is no right in law to a view over land in separate ownership. Further to such matters, concerns relating to highway safety and ecology could be effectively mitigated through the imposition of suitably worded planning conditions.

14. Based on the foregoing, I conclude that the proposed development would be broadly compliant with Policy SP5, SP6 and Policy H9 of the adopted LDP. Indeed, any conflict in this respect would be significantly outweighed by the material considerations that weigh in favour of the proposal. The development would therefore be acceptable in principle and, for the reasons set out above, would not cause material harm to landscape character or the wider appearance of the area. It would not therefore conflict with Policies SP7, DM2, DM4 or DM13 of the adopted LDP. 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.
15. 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 have taken into account the ways of working set out at section 5 of the WCFG 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 WCFG Act.
16. 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 conditions imposed are set out in the schedule attached to this decision. However, I have not seen anything to justify the Council's suggested Condition No.5 and suggested Condition Nos.6, 9 and 12 appear to be superfluous given that proposed access arrangements are clearly set out on the approved plans. Moreover, no reasons have been provided to justify why suggested Condition Nos. 8, 11 and 13 are considered necessary. Suggested Condition Nos.14, 15 and 17 have been replaced by Condition No. 8, attached to this decision. Finally, given that Condition No 16. would be satisfactorily addressed via Condition No.6 of the attached schedule, I do not consider it to meet the tests of national policy.

Richard E. Jenkins

INSPECTOR

Schedule of Conditions:

- 1) The development shall begin not later than five years from the date of this decision.
Reason: To comply with Section 91 of the Town and Country Planning Act 1990.
- 2) The development shall be carried out in accordance with the following approved plans and documents: Proposed Block Plan, Ref: 1147_021, dated 10.16; Site Plan, J1074910-17-01, 19.01.17; Proposed Site Layout, 1147_03, 10.16; Proposed Elevations, 1147.05, 10.16; and *Proposed Floor Plan, 1147.04, 10.16.*
Reason: To ensure that the development is carried out in accordance with the approved plans and drawings considered by the LPA as part of the application.
- 3) The residential use of the property known as Belan Einion shall cease upon first occupation of the dwelling hereby approved.
Reason: To ensure compliance with Policies SP5, SP6 and H9 of the adopted LDP.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended for Wales) (or any order revoking and re-enacting that order with or without modification), no development within Schedule 2, Part 1, Classes A, B, and E, other than such development indicated on the approved plans, shall be carried out without the prior written consent of 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 and to safeguard the living conditions of neighbouring residents.
- 5) Prior to the construction of the dwelling hereby approved details or samples of the materials to be used in the construction of the external surfaces of the dwelling 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.
- 6) Before any other development commences the access shall be constructed so that there is 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 a point 0.26 metres above ground level at the edge of the adjoining carriageway and 33 metres distant in both directions 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 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 interests of highway safety.
- 7) Before any other development commences provision shall be made within the curtilage of the site for the parking of all construction vehicles together with a vehicle turning area. This parking and turning area shall be constructed to a depth of 0.45 metres in crusher run or sub-base and maintained free from obstruction at all times such that all vehicles serving the site shall park within

the site and both enter and leave the site in a forward gear for the duration of the construction of the development.

Reason: In the interests of highway safety.

- 8) No development shall commence until details of a scheme for the disposal of foul and surface water has been submitted to and agreed in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to the use of the development and retained in perpetuity.

Reason: To prevent pollution of the environment and flood risk by ensuring the provision of adequate foul and surface water drainage, with particular reference to the fact that the submitted plans are stamped "Preliminary".

- 9) 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 and implemented as approved and maintained thereafter.

Reason: In the interest of the character and appearance of the area and ecology.