



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: 28.03.2019

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: 28.03.2019

Appeal Ref: APP/T6850/A/18/3218043

Site address: Bryn Afal, Tregynon, Newtown, SY16 3EP

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 Malcolm Brown against the decision of Powys County Council.
 - The application Ref: P/2017/1048, dated 12 September 2017, was refused by notice dated 5 July 2018.
 - The development proposed is one affordable 2 bedroom dwelling on land adjacent Bryn Afal and associated works including a footway to Oliver's Lane.
-

Decision

1. The appeal is allowed and planning permission is granted for one affordable 2 bedroom dwelling on land adjacent to Bryn Afal and associated works including a footway to Oliver's Lane at Bryn Afal, Tregynon, Newtown, SY16 3EP in accordance with the terms of the application, Ref: P/2017/1048, dated 12 September 2017, 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 Malcolm Brown against Powys County Council. That application is the subject of a separate Decision.

Procedural Matter

3. A Section 106 agreement was submitted with the planning application and it has been advanced through to the planning appeal process. However, that document clearly represents an incomplete copy of a model Section 106 template and does not represent a legally binding document capable of securing the property as an affordable dwelling in accordance with the requirements of Technical Advice Note 2: *Planning for Affordable Housing* (2006)(TAN2). Accordingly, I am unable to attribute it any weight in the determination of this appeal.

Main Issues

4. These are: the effect of the proposed development on the character and appearance of the area; and whether the development would provide acceptable living conditions for the occupiers of neighbouring residential properties and the future occupiers of the appeal property, with particular reference to outlook.
-

Reasons

5. The appeal relates to a parcel of land that currently forms part of the residential curtilage of a detached residential property known as Bryn Afal in Tregynon near Newtown. The site would be accessed via Oliver's Lane and is bounded by residential dwellings to the north, east and south. The appeal proposal seeks full planning permission for a part single storey, part two storey, two bed dwelling with associated access arrangements. The topography of the area is such that the proposed dwelling would be sited on significantly higher ground than the adjacent properties to the south and significantly below Bryn Afal which is located to the north-west. The Council does not object to the principle of residential development at the appeal site and, having regard to the status of the land within the adopted Powys County Council Local Development Plan (2018) (LDP), I have no reason to come to a different conclusion on such a matter. I shall therefore focus my reasoning on the principal matters of dispute.
6. The Council objects to the proposed development on the basis that it would have an adverse impact upon the character and appearance of the area. Specifically, it contends that the siting of the proposed dwelling within close proximity to the north and east boundaries would have a cramped appearance. However, I was able to confirm at the time of my site visit that the proposed layout would not be inconsistent with the general layout of many other dwellings in the area and, in this respect, I do not consider the LPA's concerns to be well-founded. Furthermore, I am satisfied that the overall design and use of materials would be consistent with other dwellings located along Oliver's Lane. I do not therefore concur with the LPA's assessment that the development would cause material harm to the character and appearance of the area and thereby conflict with Policies SP7, DM4 or DM13 of the adopted LDP.
7. The second reason for refusal relates to the effect the proposed development would have upon the living conditions of the occupiers of neighbouring residential properties and whether the development would provide acceptable living conditions for future occupiers of the appeal property. I shall deal with each matter in turn. There is no doubt that the proposed dwelling would be located at significantly higher ground level from the properties to the south. However, by reason of the siting of the proposed dwelling, and in particular the distance of the dwelling from such properties and the oblique angle relative to Cream Cottages, I do not consider that the development would have any significant overbearing or overlooking impacts upon the occupiers of those properties. The single storey nature and the pitch of the roof of the nearest element of the proposed dwelling serves to reinforce such a finding. I recognise the Council's concerns regarding the erection of a boundary fence. However, the appellant's written submissions clarify that this does not form part of the appeal proposal and I am satisfied that planting along such a border could be satisfactorily controlled via the imposition of a suitably worded planning condition.
8. The development would be located within relative close proximity to the adjacent property to the east, referred on the site plan as Cae Isaf. However, the LPA has not objected on the grounds of loss of privacy and, given the proposed pattern of fenestration, I see no reason why the development would be detrimental to the occupiers of Cae Isaf in this respect. Similarly, given the modest scale of the proposed dwelling, the orientation of Cae Isaf and the prevailing topography between the two properties, I do not consider that the development would have an oppressive or overbearing impact on the occupiers of that property. The Council considers that the development would fail to provide acceptable levels of outlook for future occupiers of the proposed dwelling, specifically referring to the close proximity and elevated position of Bryn Afal. However, by reason of the fact that the proposed dwelling

would be off-set from that property, and not incorporate any windows in its north western elevation, I do not consider that there would be material harm in this respect.

9. I therefore find that the proposed development would not cause material harm to the character and appearance of the area. I also find that it would not cause material harm to the living conditions of the occupiers of neighbouring residential properties or provide unacceptable living conditions for future occupiers of the property. In coming to such conclusions, I have fully considered the Inspector's findings in respect of Appeal Ref: 2164773. However, I have considered this appeal on its own particular merits and I am satisfied that the amendments to the overall scheme, including the substantially different site layout, sufficiently differentiate it from those previously found to be unacceptable. It therefore follows that there would be no conflict with Policies SP7, DM4 or DM13 of the adopted LDP. I recognise that a number of other issues have been raised by interested parties, including those relating to pedestrian and highway safety, drainage and ecology. However, having regard to the scale of the development proposed and the potential for such matters to be addressed via the imposition of suitably worded planning conditions, I do not consider that such matters render the appeal proposal unacceptable.
10. I have already set out above that I have not had sight of a legally binding Section 106 agreement capable of securing the development as an affordable dwelling in perpetuity. However, the Council has confirmed that it did not wish to secure the development as an affordable dwelling given that the principle of residential development within the area is acceptable. I have fully considered this matter, including whether such a matter could be addressed via a planning condition. However, given that the residential development is considered acceptable in principle, and bearing in mind the fact that allowing the appeal without such a planning condition would not preclude the property from being brought forward as an affordable dwelling, I do not consider that a condition would meet the policy tests set out in Welsh Government Circular 016/2014: *The Use of Planning Conditions in Development Management* (WG Circular 16/2014).
11. Therefore, having considered all matters raised, I conclude that the appeal should be allowed subject to the imposition of planning conditions. 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 (WBFG Act). I 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.
12. I have considered the suggested conditions and, having had regard to the advice in WG Circular 16/2014, have adjusted their wording in the interest of clarity and precision. Reasons for the imposition of each of the conditions is set out in the schedule of decisions attached to this decision. I note the appellant's contention that drainage matters have already been agreed. However, given the degree of ambiguity regarding such a situation, I consider it necessary for such a condition to be imposed.

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: *Location Plan, Land Adj to Bryn Afal - Landscaping Site Plan (proposed Block Plan), Soakaway plan (received by the LPA 22 May 2018), Proposed Elevations (received by the LPA 22 December 2017).*

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

- 3) Notwithstanding the provisions of schedule 2, part 1, class A, B, C, E, F, G 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 under such classes shall take place unless expressly authorised by this permission and shown on the approved plans.

Reason: To ensure that the development hereby permitted does not have a detrimental impact on the character and appearance of the area or the living conditions of the occupiers of neighbouring residential properties.

- 4) The dwelling hereby permitted shall not be occupied until space has been laid out within the site for 2 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. That space shall thereafter be kept available for the parking and turning of vehicles in perpetuity.

Reason: In the interest of highway safety.

- 5) The mitigation measures identified in Appendix 2-5 of the Ecological Constraint Assessment Report produced by Star Ecology dated January 2018 shall be implemented in full and maintained thereafter unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of ecology.

- 6) Notwithstanding any boundary treatments proposed, a detailed landscaping scheme that includes all boundary treatments shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the dwelling. The scheme shall include a scaled drawing and a written specification clearly describing the positions, height, design, materials and type of boundary treatment to be erected, as well as the species, sizes, densities and planting numbers proposed, including aftercare measures. Drawings must include accurate details of any existing trees and hedgerows to be retained with their location, species, size and condition. The approved scheme shall be implemented as approved and retained as such in perpetuity.

Reason: To ensure that the development hereby permitted does not have a detrimental impact on the character and appearance of the area or the living conditions of the occupiers of neighbouring residential properties.

- 7) Details of any external lighting shall be submitted to and approved in writing by the local planning authority before the dwelling is occupied. Development shall be carried out in accordance with the approved details.

Reason: In the interest of ecology.

- 8) Notwithstanding the approved details, 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 occupation of the dwelling and be retained in perpetuity.

Reason: To ensure the satisfactory drainage of the site.