



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 02/03/20

gan Richard E. Jenkins BA (Hons) MSc
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 16.04.2020

Appeal Decision

Site visit made on 02/03/20

by Richard E. Jenkins BA (Hons) MSc
MRTPI

an Inspector appointed by the Welsh Ministers

Date: 16.04.2020

Appeal Ref: APP/T6850/A/19/3241530

Site address: Upper Gwestydd, Upper Gwestydd Lane, Cefn Mawr, Newtown SY16 3LA

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 Gareth Woosnam of WG and DE Woosnam against the decision of Powys County Council.
 - The application Ref: P/2018/0470, dated 29 April 2018, was refused by notice dated 23 May 2019.
 - The development is the proposed erection of a free range poultry unit (egg production), erection of feed bins, creation of vehicular access and all other associated works (resubmission within 12 months).
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for an award of costs was made by the appellant against the Local Planning Authority (LPA). This application is the subject of a separate Decision.

Procedural and Preliminary Matters

3. The appellant has raised in evidence matters relating to The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2016. However, as such matters lie beyond the scope of an appeal submitted under Section 78 of the aforementioned Act and are therefore beyond my jurisdiction in determining this appeal, I shall not conclude on such matters.
4. The description of development set out above, as taken from the planning application form¹, describes the scheme as a "*resubmission within 12 months*" of an application for the "*proposed erection of a free range poultry unit (egg production), erection of feed bins, creation of vehicular access and all other associated works*". Nevertheless, the evidence submitted as part of the appeal also includes references to previous schemes. For the avoidance of any doubt, my jurisdiction in determining this appeal is

¹ Planning Application Ref: P/2018/0470

confined solely to the scheme determined by the LPA under planning application Ref: P/2018/0470.

5. The Council has found the general principle of the proposed development to be in broad compliance with the adopted development plan, as well as national policy set out in Planning Policy Wales (Edition 10, 2018) and Technical Advice Note 6: *Planning for Sustainable Rural Communities* (2010) (TAN6). As I have no reason to come to a different conclusion on such a matter, I shall confine my reasoning to the principal matters of dispute. In concluding on such matters, however, I shall pay particular attention to the weight that should be attributed to the need and positive benefits of the scheme, as well as any lawful fall-back position that might be relevant.

Main Issues

6. These are: the effect of the proposed development upon highway safety, having particular regard to the suitability of the local highway network, the need and positive benefits of the scheme and any fall-back position that might be relevant; and whether the development would make satisfactory provision for foul drainage.

Reasons

7. The appeal relates to an area of land located approximately 1.3 km to the north-east of Newtown in Powys. The land is in agricultural use and forms part of the existing agricultural holding at Upper Gwestydd. The appeal proposal seeks full planning permission for the erection of a 32,000 free range poultry unit for the purposes of egg production, the erection of feed bins, provision of a new vehicular access into the appeal site and other associated works. The proposed poultry unit would be located to the south-east of the existing farmhouse and associated farm buildings and would measure approximately 140 metres in length by some 20 metres in width. The overall ridge height would amount to some 5.9 metres, with the proposed feed bins standing at approximately 8.2 metres.

Highway Safety

8. The proposed development would be accessed via the U2621 which represents a no through road leading from the classified C2011 county road north of Newtown. I was able to observe at the time of my site inspection that the U2621 is constrained by its width and availability of adequate passing bays. The appeal proposal seeks to mitigate such concerns through the provision of two '*Formal Passing Bays*'. Nevertheless, it is my view that the scheme would still be over-reliant upon the existing '*Informal Passing Bays*'² which, by virtue of their scale, siting and form, fail to mitigate the aforementioned constraints and provide satisfactory refuge for the safe passing of vehicles. Indeed, I was able to experience at the time of my site visit the need to reverse reasonable distances when met by on-coming vehicles, including at times when rear visibility was obscured by reason of the vertical alignment of the highway. In addition to such concerns, I concur with the Highway Authority's assessment that, given the close proximity of proposed '*Formal Passing Bay No. 1*' to the proposed access into the appeal site, it would have limited benefit in terms of highway safety.
9. I recognise the appellant's arguments that the number of vehicular movements to the site would be relatively modest. Specifically, the evidence indicates that the delivery and removal of birds would be at the beginning and end of a 14 month cycle by articulated lorry, with egg collections taking place twice per week and feed delivered

² As referred in the appellant's evidence

twice per fortnight. Manure would be largely dealt with within Upper Gwestydd, although part time staff may be necessary, particularly during periods of high labour demand such as during lambing season. Nevertheless, having regard to the details of such movements, there is little doubt in my mind that the development would represent an intensification of use of the highway network relative to the existing operations at the site, with the size of the necessary vehicles not insignificant. It is for these reasons that I consider there to be little doubt that the development would exacerbate already challenging highway conditions along the U2621.

10. I have not seen anything to indicate that the proposed access from the site onto the U2621 would cause material harm. Nevertheless, I share the Council's concerns in respect of the junction between the U2621 and C2011. Specifically, I was able to observe at the time of my site visit serious issues in respect of its alignment, width, radii and visibility. In particular, a safe right turn to join the C2011 from the U2621 would be difficult to achieve in any vehicle, with such concerns clearly exacerbated for Heavy Goods Vehicles (HGV). Vehicles needing to undertake manoeuvres to egress from that junction, or needing to cross the centreline of the C2011, would also represent a significant risk to public safety. Similar concerns would also arise should vehicles attempt to access the U2621 from the C2011 when travelling from a northerly direction. I recognise the fact that the appellant proposes that a planning condition be imposed, and signage installed, to direct traffic to turn left from the U2621 onto the C2011 towards Newtown and for a no left turn onto the U2621 from the C2011. However, such a requirement could be particularly onerous for vehicles wishing to travel from or in a northerly direction towards Llanfair Caereinion.
11. Notwithstanding such matters, whilst the appellant contends that visibility in a southerly direction from the U2621 would be adequate, it would appear that such assertions are based upon a contribution being made by the appellant towards the cost of signage and the provision of double white lines to prevent on-coming vehicles overtaking. The appeal proposal is not accompanied by a planning obligation to effectively make provision for such a contribution and, in any event, I have not seen anything to persuade me that such measures would satisfy the overall highway safety concerns. Indeed, given that overtaking movements could still be undertaken along the C2011 with such restrictions in place, I concur with the LPA's contention that the use of double white centre lines should not be used as an alternative to the provision of adequate junction visibility. I do not, therefore, consider that such proposals represent a satisfactory design solution. In coming to this conclusion, I have been particularly mindful of the fact that vehicles driving in a northerly direction along the C2011 would be unlikely to have sufficient forward visibility to see waiting vehicles at the U2621/ C2011 junction.
12. I note the fact that access to the appeal site could potentially be provided via the U2620. However, as this does not form the route proposed in the scheme considered by the Council under planning application Ref: P/2018/0470, I do not consider that it would be appropriate for me to conclude on such matters in the context of this appeal. I therefore conclude that the proposed development would intensify the operations at the appeal site and thereby exacerbate already challenging highway conditions. Indeed, for the aforementioned reasons, I consider that the development would represent a material threat to highway safety. The development would therefore run counter to the aims of Policy DM13 of the adopted Powys Local Development Plan 2011-2026 Written Statement (adopted April 2018) (LDP) which, amongst other things, seeks to ensure that development proposals have been designed to minimise the impacts on the transport network whilst ensuring highway safety for all transport

users is not detrimentally impacted upon. It would also conflict with the general thrust of LDP Policy T1 which relates to travel, traffic and transport infrastructure.

13. There is no doubt in my mind that the proposed development would represent a form of *'farm diversification'* which is generally supported by both local and national policy. Indeed, Technical Advice Note 18: *Transport* (2007) (TAN18) states that: "*Local Authorities should adopt a positive approach to development associated with farm diversification in rural areas*"³. The development would also bring significant financial benefits to the appellant and his family and would undoubtedly have a positive knock-on effect for the wider rural economy. Indeed, the development would help retain existing agricultural workers and create farm jobs, whilst also creating sub-contracting opportunities and construction work. Such matters clearly weigh in favour of the development from an economic development perspective. Nevertheless, such matters need to be considered within the wider context of the planning policy framework which, at both a local and national level, provide a presumption against development that would represent a material threat to highway safety. Indeed, in undertaking such a balancing exercise, there is no doubt in my mind that the risk to highway safety in this case significantly outweighs the need and positive benefits of the scheme.
14. Much of the appellant's arguments revolve around the fact that the traffic movements associated with the proposed development should be considered as part of a *'trade-off'* with the previous dairy operation at Upper Gwestydd. However, whilst the evidence indicates that a 35 head dairy operation formerly existed, it ceased at some point between 1977 and 1994. Having regard to the passing of time and the scale of this operation, I do not consider that such matters weigh significantly in favour of the development proposed in this case. Indeed, no evidence has been submitted to indicate that a modern milking parlour capable of producing enough milk to require the level of vehicular movements cited in the appellant's evidence exists. I therefore consider it to be relatively unlikely that such traffic movements would occur in relation to such a use without a material change in circumstances. I therefore disagree with the appellant's contention that a dairy operation of the scale referred in the evidence could be brought back into use with *'minimal effort'*.
15. It is well-established in law that an alleged fall-back position such as that proposed in this case should be considered within the context of the likelihood of such a use resuming should the appeal be dismissed. In this respect, I have not seen anything to persuade me that a significant dairy operation would be imminent should planning permission for the proposed development be withheld. Indeed, the period of time since the dairy operation ceased is significant, with the appellant's own evidence frequently referring to it as an *'historic'* dairy use. Furthermore, it is relevant to note that a letter from the appellant's own transport consultants⁴ indicates that the appellant has no intention of reinstating the dairy operation. I do not, therefore, consider the historic dairy use to weigh heavily in favour of the development.
16. For the avoidance of any doubt, I have fully considered the wider agricultural use of Upper Gwestydd which includes the keeping of a herd of approximately 40 commercial suckler cows, together with an established flock of commercial sheep for lamb production. However, as I have not been provided with anything to indicate that such existing agricultural operations would cease to subsist should the appeal be allowed, I do not consider such factors to justify the proposed development. In fact, the *'Appeal Statement on behalf of the Appellant'* indicates that the proposed poultry enterprise

³ Paragraph 3.14

⁴ SK Transport Planning Ltd, dated 13 February 2019

would support the existing beef and sheep enterprises and that such uses would integrate well together. It therefore remains a real possibility that the vehicular movements associated with the existing use of Upper Gwestydd would continue alongside any movements associated with the proposed use should the appeal be allowed. It would not, therefore, be reasonable to off-set the proposed vehicular movements against existing operations.

17. I have considered all other matters raised, including the other planning decisions cited within the appellant's evidence. However, I have not seen anything to indicate that the appeal proposal has the exact same set of circumstances as the other proposals referred therein. Notwithstanding this, it is clear that many of the other schemes referred⁵ were found to be acceptable in highway safety terms, thus materially differentiating them from that proposed in this case. Other appeal decisions, including Appeal Ref: 2228984, indicate that the extent of the shortfalls in terms of highway design are not as severe as that proposed in this case. In any event, it is a well-established principle of planning that each case should be treated on its own particular planning merits and it is on this basis that I have considered the issues raised through this appeal. The other planning decisions referred within the evidence do not, therefore, lead me to alter my overall conclusions in this case. Similarly, given that the proposed use is yet to have been implemented, I do not consider the lack of evidence of any personal injury accidents to weigh materially against the proposal.

Drainage

18. The Council contends that insufficient information has been provided to adequately ensure that the quality of surface and ground waters would not be adversely affected by the proposed development, having particular regard to the provision of foul drainage. Specifically, the Council notes the fact that Policy DM13 of the adopted LDP states, amongst other things, that adequate utility services exist or will be provided readily and timely without unacceptable adverse effect on the surrounding environment and communities. Consistent with Welsh Government Circular 008/2018: *Planning requirements for private sewerage in new development* (WG Circular 008/2018), the reasoned justification to the LDP also states that all new development should be connected to the public foul sewerage system and that development will not be permitted unless foul sewers and sewerage treatment works of adequate design and capacity are available or will be provided in time to serve the development.
19. No details have been submitted to confirm connection to the existing mains sewer and no details have been provided of a localised treatment facility or septic tank. Indeed, there is also no evidence to indicate that there has been an assessment of the feasibility of such options, including the necessary assessment of mains capacity or ground conditions. Without such information, I concur with the Council's assessment that the provision of such a facility would run counter to the general thrust of both the adopted development plan and the advice contained within WG Circular 008/2018. Nevertheless, the appellant's appeal submissions are clear that the provision of a toilet is not essential given that such facilities are already available at existing buildings in the vicinity. As such, and bearing in mind the fact that the provision of such a facility could be prevented through the imposition of a suitably worded planning condition, I do not consider that such an issue should be decisive in this case.

⁵ Including Appeal Ref: 3154472 and Appeal Ref: 3208119

Overall Conclusions

20. Despite finding that the concerns relating to drainage could be satisfactorily addressed through the use of planning conditions, I have found that the development would intensify the operations at the appeal site, exacerbate already challenging highway conditions and represent a material threat to highway safety. As such harm and associated policy conflict would not be outweighed by the need and positive benefits of the scheme, or indeed be justified by any lawful fallback position, I consider such a matter to amount to a compelling reason why planning permission should be withheld in this instance. For this reason, and having considered all matters raised, I conclude that the appeal should be dismissed.
21. 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 also 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.

Richard E. Jenkins

INSPECTOR