



## **Penderfyniad ar yr Apêl**

gan Robert Sparey MPlan

Person a benodir gan Weinidogion  
Cymru

Dyddiad: 11/11/2022

## **Appeal Decision**

by Robert Sparey MPlan

A person appointed by the Welsh  
Ministers

Date: 11/11/2022

**Appeal Ref: CAS-02196-K0Z7X7**

**Site address: Pen-Y-Derw, Forden, Welshpool SY21 8NH**

**The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed person.**

- The appeal is made under section 62ZB of the Town and Country Planning Act 1990.
- The appeal is made by Mr Mark Williams against a notice of invalidity issued by Powys County Council.
- The Council's reference is 22/1463/FUL.
- The notice was issued on 15 September 2022.
- The application seeks planning permission for "Replacement of dilapidated Dutch barn with a new Dutch barn for holiday let."
- The requirements of the notice as issued are:
  1. Within the application form, in section 'All types of floor space: Non-residential floor space' the box 'Yes' should be ticked. The calculation of the floor space is 332sq meters, with your permission please confirm whether you are happy for me to amend the form.
  2. Please insert a green dashed line for the Right of Way onto the location plan, and ensure that the blue boundary line at the top of the plan is joined. It is noted from the application form that a new treatment plant is to be included in this application, please show the treatment plant with a red boundary line, and show soakaway with a red dotted line onto the location plan.
  3. Please provide scaled 1:500/1:200 existing and proposed block plans. Please include the treatment plant with a red boundary line, and show soakaway with a red dotted line.
  4. The application fee is calculated on the erection of non residential buildings where the floor area exceeds 75sq meters. The total floor area measures 332sq meters (includes storage shed, ground floor and first floor of barn). The fee has been calculated as follows;  
£460 per 75sq meters  
Total floor space = 332sq  
332 divided by 75 = 4.426 rounded up to 5  
5 times by £460 = £2,300  
We have received a payment of £460, therefore the remaining balance is £2,300 - £460 = **£1,840**

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- The appeal is made on the ground set out in section 62ZB(2)(b) of the Town and Country Planning Act 1990 (as amended) [the 1990 Act].
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. The appellant's grounds of appeal document confirms that requirements 1 to 3 of the notice as issued have been addressed with the Local Planning Authority (LPA) and are therefore not a dispute between the parties. Only requirement 4 relating to the fee is before me in dealing with this appeal.
3. Whilst for this type of appeal it is normally expected that the LPA's representations will consist of the contents of the notice of invalidity, Regulation 5 of the Town and Country Planning (Validation Appeals Procedure) (Wales) Regulations 2016 ['the 2016 Regulations'] allows the appointed person to request further information. In this instance I considered it appropriate to request a statement of reasons from the LPA in relation to their calculation of the fee. The LPA provided this information within the required timescale and the appellant was afforded an opportunity to respond. I have taken the LPA's statement and the appellant's response into account while determining this appeal.

## Reasons

4. The relevant fee is determined by the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 (as amended) ['the Fees Regulations']. Guidance on determining the fee is provided in the Welsh Government's Development Management Manual Section 7 Annex: Calculating the Fee ['Section 7 Annex'] (<https://gov.wales/development-management-manual>).
5. The essence of the matter before me is whether the correct fee would be that for an application for a dwellinghouse. Regulation 2 of the Fees Regulations defines 'dwellinghouse' for the purposes of those regulations as "... a building which is used as a single private dwellinghouse and for no other purpose". This is supplemented by advice in paragraphs 10.1 of Section 7 Annex that clarifies that a dwellinghouse could include "a holiday flat, if self contained and owned by a private owner (**but not if let on a short-term basis to paying guests**)", my emphasis added.
6. The proposed development is described on the application form as a 'holiday let'. It therefore seems clear that this application should not attract the fee associated with an application for a dwellinghouse.
7. I have considered the appellant's point that a condition could be used to allow the property to be let for a period of not more than 28 days per year to a single household. However, this was not something proposed in the application as submitted and would seem to contradict paragraph 4.5 of the Planning Support Statement submitted with the application.
8. The description of development also makes it clear that a new building will be erected. Category 2 of the table in Part 2 of Schedule 1 of the Fees Regulations sets the fee for the erection of buildings that do not fall within:
  - Category 1 – The erection of dwellinghouses,

- Category 3 – The erection, on land used for the purposes of agriculture, of buildings to be used for Agricultural purposes,
  - Category 4 – The erection of glasshouses on land used for the purposes of agriculture,
  - Category 5 – The erection, alteration or replacement of plant or machinery
  - Category 7 - 7(a) the carrying out of operations (including the erection of a building) within the curtilage of an existing dwellinghouse, for purposes ancillary to the enjoyment of the dwellinghouse as such, or the erection or construction of gates, fences, walls or other means of enclosure along a boundary of the curtilage of an existing dwellinghouse; or 7(b) the construction of car parks, service roads and other means of access on land used for the purposes of a single undertaking, where the development is required for a purpose incidental to the existing use of the land).
9. It is evident that the proposed development does not fall into Categories 1, 3, 4, 5 or 7. The application is for full planning permission where the area of the gross floor space to be created by the development exceeds 75 square meters and therefore attracts the fee specified in Category 2(b)(iii). Whilst it is unfortunate that the Notice of Invalidity did not contain the LPA's reasoning as to why this Category applies, the Notice as issued does include calculations of the fee based on the correct Category. The appellant has not disputed the areas used in the fee calculation, only the Category.

### **Conclusion**

10. For the foregoing reasons, I am satisfied that the LPA has correctly calculated the fee in relation to this application. The appeal therefore fails, and the Notice stands.

*Robert Sparey*

Mr Robert Sparey

Appointed Person