



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 20/09/2022

**gan Clive Sproule BSc MSc MSc
MRTPI MEnvSci CEnv**

**Arolygydd a benodir gan Weinidogion
Cymru**

Dyddiad: 16/01/2023

Appeal Decision

Site visit made on 20/09/2022

**by Clive Sproule BSc MSc MSc
MRTPI MEnvSci CEnv**

**an Inspector appointed by the Welsh
Ministers**

Date: 16/01/2023

Appeal Ref: CAS-01468-B8H5L8

Site address: The Hexagon, Garth, Llangammarch Wells, Powys LD4 4AT

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 Laurence Golding against the decision of Powys County Council.
 - The development proposed is change of use of annexe to ancillary holiday accommodation (part retrospective).
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Decision

1. The appeal is dismissed.

Background and Procedural Matters

2. The appeal site is an existing garage, workshop and storage building that was granted planning permission in 2006, and an amended scheme was approved in 2011. In 2016, an enforcement complaint was received regarding alleged extensions to the building and people sleeping in it. A subsequent planning application is now the subject of this appeal.
3. On 09/03/2022, PEDW wrote to the main parties in this appeal noting that: the appeal proposal had been identified as potentially capable of increasing levels of phosphates discharged into the catchment of a riverine SAC; and seeking evidence to inform an assessment under The Conservation of Habitats and Species Regulations 2017.
4. The Grounds of Appeal raise a considerable number of legal arguments in relation to the law and planning process, and the actions of the local planning authority. However, these matters fall outside the jurisdiction of this appeal.

Main Issues

5. Within the scope of this appeal, the main issues are the effect of the development on 1) highway safety, and 2) biodiversity.

Reasons

Highway safety

6. The Hexagon is within a long curving plot that has a shared access from the B4519 close to its junction with the A483. The building that is the subject of this appeal was granted planning permission to provide a garage, workshop and storeroom for The Hexagon. The two storey garage building extends across the plot to provide a gated entrance into the rear of the plot where the dwelling is located. There is sufficient space in front of the garage building to park and turn vehicles, while maintaining the shared access for vehicles moving between the B4519 and a parking area behind dwellings with a frontage onto the A483.
7. The access to the B4519 is shared with the dwelling at the junction of the B4519 and A483. Vehicles from the house at the junction approach the road perpendicular to the B4519, whereas vehicles using the shared access from The Hexagon approach at an acute angle. In order to access the track to The Hexagon, as experienced by the Council's Highway Officer, drivers approaching on the B4519 from the south would need to cross over into the opposing carriageway. A hazardous manoeuvre, exacerbated by the proximity of the access to the junction with the A483. This risk would be heightened by the annexe visitors' potential unfamiliarity with the access's layout and the manoeuvres required to use it.
8. The Highway Authority has confirmed that a planning condition requiring access improvements could address the layout of the access from the B4519 to improve its safety. If such a condition were to be imposed, it would enable the safe and efficient use of the access for the appeal scheme to comply with Powys Local Development Plan 2011-2026 ("LDP") Policies DM13 and T1. However, as the landownership and/or control of the land required for the access improvements remains unclear, it is not apparent that a condition to modify the access onto the B4519 could be implemented.

Biodiversity

9. The appeal site lies within the catchment of the River Wye and its Special Area of Conservation ("SAC"). When the planning application for the change of use was determined in 2021, the Council took into account "*Natural Resources Wales ("NRW") interim advice for planning applications that have the potential to increase phosphate levels in river Special Areas of Conservation SACs*". The current NRW "*Advice to planning authorities for planning applications affecting phosphorus sensitive river Special Areas of Conservation*" ("the NRW advice"), which is published on the NRW website, is relevant to the determination of this appeal.
10. Research referred to within the NRW advice confirms there to have been widespread failures in water quality in the River Wye SAC catchment, including in the area around and downstream of the appeal site. The appeal proposal would introduce a use that would have the potential to increase the release of phosphorus into the River Wye SAC. Accordingly, I conclude that the proposal would be likely to significantly affect the River Wye SAC and should be "screened in" for further consideration through an appropriate assessment.
11. The recreation hall that previously stood on the appeal site is noted to have had a kitchen and two toilets. The appellant's Grounds of Appeal state that the use of the sewer continued after the recreation hall was replaced with the current garage / workshop and storeroom building.
12. However, I must consider the impact of the proposed development on the integrity of the SAC, and rather than the existence of a sewer connection, this appeal must consider the

potential for there to be a change in the sewage discharge from the appeal site. If the recreation hall was mostly used by local people, the sewage discharge into the River Wye SAC catchment, would have been largely that which would have occurred if people had been in their homes, or other local buildings. If people from outside the catchment had stayed in the building after its use as a recreation hall, there is not clear evidence of this, and it would have occurred some time ago.

13. The use of the present building for holiday occupation reasonably would be expected to draw people into the area from outside the River Wye SAC catchment. The discharge created by visitors from outside the catchment would be in addition to the current normal nutrient loading in the River Wye SAC, and this current normal loading has been identified as being sufficient to be causing water quality failures in the SAC.
14. There is capacity within the existing public sewerage network to receive the foul water from the appeal scheme. However, the evidence in this case does not confirm that the sewerage system has capacity to treat the additional phosphate discharge, or that such capacity would be provided in the near future.
15. Nor are there any details of measures to mitigate the additional phosphorus that would be generated by the appeal scheme.
16. A comparison has been drawn between the potential levels of phosphorus released by the appeal scheme and other developments and agricultural operations. However, these other potential sources of phosphorous discharge are not the subject of this appeal, and it is the development proposed in this case that falls to be considered in this appropriate assessment. The proposed discharge would be small in comparison to other potential sources of phosphorus in the River Wye SAC catchment. However, its effect would be significant if it undermines the conservation objectives of the SAC.
17. The proposed additional phosphorus discharge into the catchment would occur in combination with other similar discharges, and the effect would undermine the conservation objectives of the SAC. Accordingly, I find that an adverse effect on the integrity of the River Wye SAC cannot be ruled out.
18. No alternative solutions to the proposed additional discharge have been offered, nor have imperative reasons of overriding public interest and compensatory measures been demonstrated that would enable the proposal to proceed.
19. Accordingly, the appeal scheme conflicts with: LDP Policy SP7 which seeks to safeguard the County's strategic resources; and LDP Policy DM2 which is not permissive of development that would have an unacceptable adverse effect on a SAC.
20. The Habitats Directive integrates the precautionary principle and therefore these findings are in accordance with that principle.

Other Matters

21. The appeal proposal would provide the appellant with a source of income from the accommodation, and potential occupiers with a holiday destination. These matters provide considerable weight in favour of the appeal scheme.

Conclusion

22. All matters raised in this case have been taken into account and none, including the scope of possible planning conditions, have been found to outweigh the very significant weight ascribed to the identified unacceptable adverse effect on the River Wye SAC, and the resulting policy conflict. Accordingly, the appeal should be dismissed.

23. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives of making our cities, towns and villages even better places in which to live and work and embedding our response to the climate and nature emergency in everything we do.

Clive Sproule

Inspector