



## Appeal Decision

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by C MacFarlane BSc(Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 02/10/2023

Appeal reference: CAS-02381-D1D2L9

Site address: Tanyfron, Broncafnt Lane, Llanfair Caereinion, Welshpool SY21 0BW

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- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Nigel Griffiths against the decision of Powys County Council.
- The application Ref 21/2225/REM, dated 6 December 2021, was refused by notice dated 14 September 2022.
- The application sought planning permission for erection of 3 dwellings and garages, creation of 3 vehicular access, installation of sewage treatment plant and all associated works (some matters reserved) at Tanyfron, Broncafnt Lane, Llanfair Caereinion, Welshpool SY21 0BW, without complying with conditions attached to planning permission Ref 20/0010/OUT, dated 1 July 2020.
- The conditions in dispute are Nos 5, 6, 7 and 14 which state that:

*5. Prior to the commencement of development, a scheme for the provision of affordable housing as part of the development shall be submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex B of TAN 2 or any future guidance that replaces it. The scheme shall include:*

*i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than one housing unit;*

*ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;*

*iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of that affordable housing if no RSL is involved;*

*iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and*

*v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.*

*6. The affordable dwelling shall have a maximum gross floor area of 115 square metres (measured internally and including garages where designed as an integral part of the dwelling) and notwithstanding the provisions of schedule 2, part 1, classes A, B, C and E*

*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), the affordable dwelling shall not be subject to extension, roof alterations and buildings other than those expressly authorised by this permission and subsequent approval of reserved matters.*

*7. Prior to the commencement of development, a scheme for the provision of improvements to the public right of way network to serve the development must be submitted to and approved in writing by the local planning authority. The scheme shall include details of an implementation plan for any improvements. The development shall be carried out in accordance with the agreed scheme and its implementation plan.*

*14. Notwithstanding the provisions of schedule 2, part 1, classes A, B, C and E 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), the dwellings hereby permitted shall not be subject to extensions, roof alterations and buildings other than those expressly authorised by this permission and subsequent approval of reserved matters. No dwellings shall exceed a maximum of three bedrooms.*

- The reasons given for the conditions are:

*5. To ensure that affordable housing is secured in accordance with policies SP3 and H5 of the Powys Local Development Plan (2018), Technical Advice Note 2 and Planning Policy Wales.*

*6. To ensure that affordable housing is secured in accordance with policies SP3 and H5 of the Powys Local Development Plan (2018), the Council's Affordable Housing Supplementary Planning Guidance, Technical Advice Note 2 and Planning Policy Wales.*

*7. To ensure that active travel and open space is secured in accordance with policies DM3 and DM13 of the Powys Local Development Plan, Technical Advice Note 16 and Planning Policy Wales.*

*14. In the interests of highway safety.*

- A site visit was made on 18 July 2023.

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## **Decision**

1. The appeal is dismissed.

## **Main Issues**

2. The main issues are whether the conditions are necessary and reasonable, having regard to (i) the provision of affordable housing, (ii) pedestrian accessibility, and (iii) highway safety.

## **Reasons**

### *Affordable housing*

3. The appeal site is a plot within a field and forming part of a larger undeveloped housing allocation for 40 dwellings, including 4 affordable dwellings, as identified within the Powys Local Development Plan 2011-2026 (LDP). In seeking to remove conditions 5 and 6, the appeal proposal would not make any provision towards affordable housing.
4. In accordance with Welsh Government's Planning Policy Wales (PPW), the need for affordable housing is a material planning consideration which must be taken into account in formulating development plan policies. LDP Policy SP3 sets the overarching target for

the delivery of affordable homes, and this is supported by Policy H5 which sets thresholds and quotas for affordable housing contributions from new developments. In seeking to achieve an appropriate range and mix of house types to meet local needs, a requirement of Policy H3 is that proposals to develop parts of sites must not prejudice the development of the remainder of the site or seek to avoid planning obligations. Policy DM1 further states that planning obligations will be sought, where necessary, to ensure that significant adverse socio-economic impacts are addressed and that benefits are secured in the public interest to meet the additional demands of development proposals. The Council's Affordable Housing Supplementary Planning Guidance (SPG) amplifies the policy framework by stating that the subdivision or phasing of development sites to avoid or reduce affordable housing contributions will not be permitted.

5. I acknowledge the provision of an affordable dwelling would be in excess of the requirements set in Policy H5, which were informed by financial viability considerations. However, paragraph 10.8 of Welsh Government's Technical Advice Note 2 'Planning and Affordable Housing' (TAN 2) specifically makes provision for Councils to seek contributions from developments falling below the policy threshold where the site forms part of a larger development, for example, part of a larger allocation. The appeal site clearly forms part of a larger allocation that is intended to make appropriate provision towards the countywide affordable housing target. Furthermore, no site-specific evidence has been provided to demonstrate that requiring a contribution would be unviable in this particular case.
6. The appellant refers to a willingness to provide affordable housing on the remaining allocated site area. However, there is insufficient evidence before me regarding the details of such a proposal, and to demonstrate that this could be appropriately secured. As such, I cannot be confident that delivery of the remainder of the allocation, including adequate provision for affordable housing, would be likely to occur.
7. The appellant has highlighted another permission granted by the Council, however I have not been provided with the full details of why this was considered acceptable. I therefore cannot be certain this is directly comparable with the appeal proposal, particularly in relation to the sub-division of an allocated housing site. The appeal decision referred to relates to the need to adhere to specific policy wording rather than assumed definitions. As there is no apparent uncertainty regarding the meaning of the wording in Policy H5, to which I have had due regard, I afford this example little weight. Regardless of whether a previous application without provision for affordable housing was supported by Council officers, this did not result in a grant of planning permission, and I must determine the case before me based on its own merits and taking account of the relevant policy framework.
8. Drawing together all of the above, whilst the requested level of provision would exceed the requirements of Policy H5, this cannot be considered in isolation. It is a well-established principle that the development plan must be read as a whole and it is clear when considering Policies SP3, H3 and DM1, as well as the SPG, PPW and TAN 2, that the appeal proposal would run counter to the overarching aims and requirements of these policies and guidance, which seek to make provision for affordable housing and resist piecemeal development that would potentially prejudice the delivery of planning obligations.
9. I therefore conclude that conditions 5 and 6 are necessary in order to make the development acceptable when assessed against the national and local policy framework and are not unduly onerous in nature or scale, or so restrictive, as to be considered unreasonable. The conditions are also relevant to planning and the development in question, as well as enforceable and the wording sufficiently precise. The tests within

Welsh Government Circular 016/2014 'The Use of Planning Conditions for Development Management' ('the Circular') are therefore met.

*Accessibility*

10. The appeal site is located near the end of Broncafnt Lane, which serves as the main access route for vehicles and pedestrians. A Public Right of Way (PROW) runs along the lane and connects to the settlement centre further to the north of the site. The appeal seeks the removal of condition 7, which requires the submission and implementation of a scheme of improvements to the PROW network serving the development.
11. Although the development is on an allocated site within the settlement boundary and not remote from nearby facilities, given the significant distance pedestrians would have to walk along the lane to access the settlement centre, with its lack of footways and lighting, and limited refuge space from vehicles due to its narrow nature, this would not represent a practical, safe and attractive route. The development would therefore be contrary to the principles of promoting active travel and commitment to reducing reliance on the private car as set out in PPW, as well as failing to comply with the requirements of Policy DM13 to enhance and integrate the PROW network within the layout of developments.
12. Whilst it may be the case that the lane and paths have been used by local residents to access the settlement, from the information before me, and taking account of the site location, it is apparent that some improvements to the network and/or extensions are required to ensure the development integrates with the existing routes and promotes non-car use.
13. I acknowledge the appellant's willingness to provide certain improvements and/or contributions. However, these must be secured through the use of a planning condition in order to ensure sufficient control and certainty of their nature and delivery. The condition does not specify the detail of the improvements to be delivered, rather this can be determined through continued dialogue with the Council, whilst taking account of landownership. I therefore conclude that the requirement of condition 7 to provide a scheme of improvements to the PROW network to serve the development is both necessary and reasonable in order to comply with Policy DM13 and PPW, and meets the tests in the Circular.
14. In refusing the application, the Council refers to Policy SP7, which seeks to safeguard strategic resources and assets, including the PROW network, from adverse impacts arising from development proposals. Any concerns regarding potential adverse impacts on the PROW network have not been articulated and, based on the siting of the development in relation to the network, I am unable to conclude that Policy SP7 is relevant in this instance.
15. Similarly, the reason for the condition refers to Policy DM3, which seeks to protect Public Open Space and secure its provision in new developments, however this is not presented as an argument by the Council. As nothing before me indicates that there would be a loss of Open Space, or failure to make provision, I do not consider Policy DM3 to be applicable.

*Highway safety*

16. Broncafnt Lane is a single vehicle width road, lacking in pedestrian facilities or formal passing places, and with limited visibility at its junction with the B4389 highway. In removing permitted development rights for alterations and extensions to the proposed dwellings, as well as additional outbuildings, the Council seeks to limit vehicle movements in the interests of highway safety. The appeal proposal seeks the variation

of condition 14 through the removal of this restriction, with the element of the condition limiting the dwellings to 3 bedrooms being undisputed.

17. In the absence of the element of the condition restricting permitted development rights, the dwellings could potentially be altered or extended, outwith the Council's control, resulting in increased occupancy and associated vehicle movements. Notwithstanding the provision of two passing places required by the original permission, due to the lack of pedestrian refuge and opportunities for vehicles to safely pass as a result of its narrow width, and substandard visibility, further intensification of the use of this road and junction would increase the potential for conflict between road users, to the detriment of highway safety. This is reflected in the response from the Highway Authority, who objected to the original application for three dwellings.
18. I note the references made to a legal agreement securing the closure of the nearby nursery. However, a copy has not been provided and I therefore cannot be certain of its content and relevance. Furthermore, the agreement has been entered into as part of the original permission on the site. In the event I were to allow this appeal, it would in effect create a new separate permission, which would require a separate legal agreement or deed of variation to the existing agreement in order to secure this measure. As no such documents have been put before me, I am unable to give weight to any potential alterations to vehicle movements that may result from the closure of the nursery.
19. Whilst the Circular states that conditions restricting permitted development rights should only be imposed in exceptional circumstances, given the severely restricted nature of the surrounding highway network, and the potential for accident or injury to occur because of increased use, the consequences of which may be serious, I consider such an approach is justified in this instance.
20. I therefore conclude that condition 14 meets the Circular tests and is both necessary and reasonable in order to comply with Policies T1 and DM13, which seek to ensure the safe and efficient flow of traffic for all transport users, and that highway safety for all users is not detrimentally impacted upon.

#### **Other Matters**

21. The appellant points to the development being acceptable in other respects, including constituting sustainable development and according with several of the objectives of the Well-Being of Future Generations Act. Even so, these are normal expectations of development and therefore are a neutral factor in my determination.
22. I note the appellants concerns regarding communication with the Council, however, this does not alter my assessment of the planning merits of the proposal.
23. In reaching my decision, 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.

#### **Conclusion**

24. For the reasons given above, the appeal is dismissed.

*Claire MacFarlane*      **INSPECTOR**