



Appeal Decision

by N Jones BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 15/11/2023

Appeal reference: CAS-02618-Y9N2V7

Site address: Unity House, Llandrinio, Llanymynech, SY22 6SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Charanjit Singh against the decision of Powys County Council.
 - The application Ref 21/0186/FUL is dated 3 February 2021.
 - The development proposed is a change of use and minor extensions to previously approved nursing home to form: 15 no 1 bed apartments, 2 no 2 bed apartments, 3 no studio apartments; total of 22 beds / 25 persons with associated parking for 27 vehicles together with amenity space.
 - A site visit was made on 4 October 2023.
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Decision

1. The appeal is dismissed.

Procedural Matters and Main Issues

2. The appeal is made against the failure of the Council to determine the application within the prescribed period. The Council prepared an officer report recommending approving the application, to which it has referred in commenting on the appeal. However, no formal decision has been made by the Council as consideration of the application was deferred at its Planning, Taxi Licencing and Right of Way committee on 16 June 2022 in order to address landownership matters. Nevertheless, from the information that is before me, including the representations made by interested parties, I consider the main issues to be (i) whether the principle of residential development on the appeal site would be acceptable; (ii) whether the proposal would be in an acceptable location having regard to planning policies relating to flood risk; (iii) the effect of the proposal on highway safety; and (iv) the effect of the proposal on heritage assets.

Application for costs

3. An application for costs has been made by Mr Charanjit Singh against Powys County Council. This application is the subject of a separate Decision.

4. A neighbouring occupier indicated an intention to submit a substantive claim for costs against the appellant however no further details were provided in order for that claim to be assessed.

Reasons

Residential development

5. Policy H1 of the Powys Local Development Plan (LDP) seeks to ensure that housing development is appropriately located and suitable in scale and type to support the delivery of a sustainable pattern of development. Housing is directed to towns as well as large villages such as Llandrinio. Within these areas, Policy H1 states that housing developments will only be permitted on sites allocated for housing or on other suitable sites within the development boundary. Unity House is located within an accessible location within the settlement development limits for Llandrinio. The proposal is to change the use of an existing large building to create residential units without extending the site footprint. It would therefore be of a type and scale commensurate to Llandrinio's place in the sustainable settlement hierarchy. The proposal would make an appropriate contribution towards affordable housing. There is no substantive evidence that unacceptable noise or disturbance would be caused by future occupiers. There would be adequate provision for parking and refuse bins. The scheme would involve only minor external alterations to the building and would have no discernible effects on the character and appearance of the wider area. Whilst I note the Community Council's concerns regarding the amenity of future residents, although two ground floor units would be served by a single external opening, they would not be overshadowed to an unacceptable extent. The proposal would have shared amenity space for future residents and although LDP Policy DM3 seeks further provision where ten or more dwellings are proposed, the Council does not identify a local shortfall and given the nature of the units proposed, being small flats, considers the incorporated area to be appropriate to the scale and type of proposal submitted. I have no reason to conclude differently in this regard.
6. I conclude that the principle of residential development on the appeal site would be acceptable and would comply with LDP Policies H1 and H5 which requires proposals for new housing development of five or more dwelling units to make contributions towards the provision of affordable housing. It would also comply with LDP Policy DM3 and be consistent with the aim of LDP Policy DM 13 to ensure the appearance of a development, its scale and its relationship to its surroundings achieves good design.

Flood risk

7. LDP Policy DM 5 states that development proposals must be located away from flood plains unless it can be demonstrated that the site is justified in line with national guidance and an appropriate detailed technical assessment has been undertaken to ensure that the development is designed to reduce / avoid the threat and alleviate the consequences of flooding over its lifetime. In addition, the development must not increase flood risk elsewhere. LDP Policy DM6 states that development proposals must avoid unnecessary flood risk by assessing the implications of development within areas susceptible to all types of flooding; any development that unacceptably increases risk will be refused. The appeal site is located within Flood Zone C2 according to the Development Advice Maps referred to in Technical Advice Note 15 'Development and Flood Risk' (TAN 15). It is within Flood Zone 3 on the Flood Map for Planning (FMfP) which contains up to date information in relation to flood risk. In these locations, the flooding consequences associated with highly vulnerable development, which includes all residential premises,

are not considered to be acceptable. Accordingly, TAN 15 advises that highly vulnerable development should not be permitted in Zone C2.

8. I have had regard to the appellant's evidence which purports to establish the lawfulness of the existing development as a nursing home for 40 residents, and which, it is claimed, would amount to a greater highly vulnerable use than that proposed by the appeal scheme. The Council's officer report accepts that proposition. However, a neighbouring occupier challenges the lawfulness of the operational development undertaken under planning permission ref. P/2008/0100 on the basis of an alleged failure to discharge a planning condition which, contrary to the Council's view, he considers is a condition precedent going to the heart of the consent. Nevertheless, it is not for me to decide whether the implementation of a planning permission is lawful in the context of an appeal made under section 78 of the Act. It is sections 191 and 192 of the Act that allow for evidence relating to lawfulness to be examined and lawfulness to be so determined as the case might be. Moreover, to demonstrate a realistic fallback position, any alternative development must be assessed on whether the likelihood of it taking place is more certain than a theoretical possibility. The appellant confirms no use has been made of the property as a nursing home, and I have no evidence that other conditions of the planning permission requiring the approval of the Council of various details prior to the occupation of the building, including the raising of the crest level of the flood defence bund, have been discharged. Furthermore, the appellant confirms that regulations and financial incentives appertaining to nursing homes changed during construction works and the operation of the premises for such purposes would have proved unviable. I have seen no evidence that these circumstances have changed such that the use is likely to come forward in a building which the appellant acknowledges to be dilapidated. Given these matters, I afford the nursing home use little weight as a fallback position.
9. The last known use of the appeal property was a dwelling with bed and breakfast accommodation and self-contained holiday apartments. Although such a use would also be highly vulnerable development within the meaning of TAN 15, the appellant confirms that the appeal building has been vacant since 2006/7 and I have seen no evidence of whether this use remains capable of subsisting following the operational works undertaken in relation to planning permission given for a nursing home. Nevertheless, the appellant has not sought to rely on this previous use as a fallback position and no substantive evidence of the extent of its use and occupation compared to that which would be generated by the appeal proposal has been provided. Accordingly, on the basis of the evidence before me, it has not been demonstrated that the balance of any existing highly vulnerable uses at the appeal site would be equal to or greater than what is proposed in the appeal scheme. The proposal is therefore contrary to TAN 15 advice. In these circumstances, I have not therefore considered the submitted flood risk assessment.
10. I conclude that the proposal would not be acceptably located in relation to flood risk. It would therefore conflict with LDP Policies DM 5 and DM6 and TAN 15 advice.

Highway safety

11. The B4393 in the area of the access to the appeal site is subject to a 50mph speed limit. Accordingly, the Highway Authority states that the design speed of the access visibility and forward visibility splays should be 160m. However, it calculates the available forward visibility to right turning traffic and visibility to the southeast to be about 80m, consistent with my own observations on my site visit. These available distances are significantly less than the 104m proposed by the appellant which are measurements based on traffic speeds observed by driving along the road rather than actual measured speeds.

Although the Highway Authority withdrew its objection to the appeal scheme, this was based on the appellant's Access Assessment (10 February 2022) which included TRICS data analysis which demonstrated that the number of vehicle movements associated with the proposed residential conversion would be less than the use as a nursing home advanced by the appellant as a fallback. However, no comparative data is provided for the last known use of the site as a dwelling with letting apartments and bed and breakfast accommodation. Accordingly, and given that I afford the alleged fallback limited weight, the proposal would increase use of a substandard access with drivers using the access and the road having inadequate warning of one another.

12. The appeal scheme would therefore harm highway safety. Accordingly, it would not comply with LDP Policy T1 which requires, amongst other things, that development proposals should incorporate safe and efficient flow of traffic for all transport users and manage any impacts to the network and the local environment to acceptable levels and mitigate any adverse impacts. It would also conflict with LDP Policy DM13 which states that development proposals will only be permitted where its listed criteria are met, including that the development ensures that highway safety for all transport users is not detrimentally impacted upon and that development proposals should meet all highway access requirements.

Heritage assets

13. The appeal site would be located some 320m west of the scheduled monument of Llandrinio Bridge and its associated World War II anti-invasion defences. Views out from these defences are integral to their historic function. However, although the proposal would be visible in significant views from the bridge and the defences, the proposed external alterations would be limited and would be screened by an existing building and mature vegetation. Cadw do not object to the proposal, and I have no reason to reach a different conclusion. The scheme would also be in close proximity to St Trunio's Church, a grade II* listed building, a sundial opposite the church porch, and the Old School Room near the church. Owing to the limited alterations proposed to the building and the presence of existing screening features, including the flood defence bund, the proposed change of use would not give rise to any material change in effects. However, and notwithstanding my findings on flood risk, no details are provided of the intended increase in height of the flood defence bund. The Council's officer report indicated that the height increase could be conditioned out of any consent meaning that the setting of nearby listed buildings could be preserved. However, this was based on the acceptance of the appellant's purported fallback position. Given the limited weight attributed to the fallback, I share the Council's Built Heritage Officer's concern that in the absence of details, the effects of any increase in the height of the bund on the setting of heritage assets locally cannot properly be assessed. It has not been demonstrated therefore that the proposal would preserve the setting of nearby listed buildings. The scheme consequently fails to comply with LDP Policy DM 13 which, amongst other things requires that development proposals must be able to demonstrate a good quality design and shall have regard to the qualities and amenity of the surrounding area. The proposal would also conflict with the strategic aim of LDP Policy SP7 to safeguard important strategic resources and assets, including listed buildings, from unacceptable development.

Other matter

14. The appellant's Ecological Impact Assessment confirms the presence of a bat maternity roost within part of the building. The wider site is assessed as being an important habitat for breeding birds and hedgehogs. NRW and the Council's Ecologist raise no objection to the proposal subject to the proposed mitigation measures and planning conditions including the requirement for submission of a wildlife sensitive lighting scheme, a

biosecurity risk assessment, a landscaping scheme, including the retention of principal trees, and biodiversity enhancements. Nevertheless, on 17 September 2023 the Welsh Government announced changes to Planning Policy Wales (PPW) with immediate effect in relation to the incorporation of green infrastructure into development proposals, following a step-wise approach to demonstrate the steps which have been taken towards securing a net benefit for biodiversity and ecosystem reliance. However, I have not made a finding on the implications of the new policy change for the proposal as it would not alter the outcome of the appeal, given that I find it unacceptable in relation to the main issues.

Planning balance

15. I have found the principle of residential development on the appeal site acceptable. I also acknowledge the dilapidated condition of the building and that its redevelopment would provide for both open market and affordable housing locally. However, these matters, even taken together, do not outweigh the substantial harm I have identified in relation to flood risk, highway safety and the effects of the proposal on heritage assets.

Conclusion

16. For the reasons given above, and taking all other matters into account, I conclude that the appeal should be dismissed.

17. 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 this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Minister's wellbeing objectives as required by section 8 of the Act.

N Jones

Inspector