



Appeal Decision

by C Sweet MPlan

an Inspector appointed by the Welsh Ministers

Decision date: 23/12/2024

Appeal reference: CAS-03548-V9W3Z8

Site address: Land opposite Brynllwarch Garden, Kerry, Newtown, SY16 4PD

- 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 Keith Harris against the decision of Powys County Council.
 - The application Ref 23/1910/FUL, dated 18 December 2023, was refused by notice dated 12 March 2024.
 - The development proposed is described as erection of 2 no. affordable housing units with associated access and package treatment plant (resubmission).
 - A site visit was made on 5 December 2024.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. Some development in the form of footings and other small scale works has already taken place and the appeal therefore seeks part-retrospective planning permission. I have considered the appeal on that basis.

Main Issues

3. The main issues are:

- (i) Whether the location of the proposal would accord with national and local planning policies which aim to protect the countryside;
- (ii) the effect of the proposal on highway safety, with regard to access.

Reasons

Location

4. The appeal site is a sloping area of land set below and to the east of the C2012 classified highway, northeast of a small number of dwellings ("the grouping") situated to the northwest of Pentre.
5. Despite having been partially cleared and subject to some works and use for storage, due to its positioning below the highway and separation from the nearest existing

dwellings, the appeal site has a largely open, undeveloped rural character which is viewed more in context with the open countryside to the east than the nearby grouping.

6. Policies SP6 and H1 of the Powys Local Development Plan (the LDP) apply a restrictive approach to housing development in the open countryside and provide for a limited number of situations where such development may be permitted.
7. Policy SP5 defines the settlement hierarchy and provides criteria which establish the circumstances in which settlements that are not specifically listed within the policy may be considered a 'rural settlement'. Policy H6 provides for affordable housing exception sites in such rural settlements.
8. This local framework is consistent with the aims of Planning Policy Wales (PPW), which amongst other things states that new building in the open countryside away from existing settlements or areas allocated for development in development plans must continue to be strictly controlled.
9. I note that the grouping may have been considered part of a rural settlement in combination with Pentre under the previously adopted Unitary Development Plan (the UDP) and that planning permission was previously granted for two dwellings at the appeal site under the UDP.
10. However, notwithstanding that the relevant planning policy framework has evolved since that time, due to the distance between the two and the prevailing topography, there is a clear physical detachment from Pentre which causes the grouping to appear as a small, separate, loosely connected group of buildings in the open countryside when viewed from both the highway and the surrounding area.
11. Given its physical characteristics, that the grouping is not a historically recognised or named settlement and that it contains less than 10 dwellings, I find that it does not meet the definition of a 'rural settlement' for the purposes of the LDP. Moreover, given the appeal site's positioning away from and below the nearest dwelling and open, rural character, irrespective of any landscaping secured via condition, the proposed dwellings would not be well integrated with the grouping. Consequently, the proposal would be perceived as a material incursion of built form into the open countryside.
12. PPW defines affordable housing as that where there are secure mechanisms in place to ensure that it is accessible to those who cannot afford market housing, both on first occupation and for subsequent occupiers. I have not been provided with any proposed measures for securing the future affordability of the proposed dwellings and whilst I acknowledge the appellant's willingness to enter into a Section 106 agreement, none has been provided.
13. The appellant has drawn my attention to a condition attached to a recently granted planning permission outside the village of Kerry. However, Circular 016/2014 'The Use of Planning Conditions for Development Management' is clear that conditions should not be used to control matters such as tenure, price or ownership and that planning obligations are the normal means of achieving affordable housing. Given the lack of information in this respect, I find that the proposal does not meet the definition of affordable housing for the purposes of national planning policy.
14. Whilst I accept that the appellant has been assessed as being in need of affordable housing by Tai Teg, given I have found the proposal does not meet the definition of affordable housing it is not necessary for me to consider this issue further.
15. I have considered the example of a single dwelling that was granted planning permission at a nearby farm put to me by the appellant. However, I do not have the full details of that

case and in any event, that application related to a rural enterprise workers dwelling, which is considered differently under the relevant policy framework.

16. The appellant also refers to ongoing development at Brynlllywarch Hall School, but there are clear differences in scale and location between that development and the proposal before me, such that it does not provide a meaningful comparison. I have considered the scheme before me on its merits, in the particular circumstances of this case.
17. Taking the above factors together, I find that the appeal site sits within the open countryside for the purposes of planning policy and that as such, the proposal does not fall within the exceptions applied to housing development in rural settlements by the LDP. Nor has any cogent evidence been provided to suggest that it falls within the limited exceptions for such development in the open countryside set out in the LDP. I therefore conclude that the intrusion of built form onto an area of open land within the countryside would be harmful and unjustified, and would be contrary to the objectives of LDP policies SP5, SP6, H1 and H6.

Highway Safety

18. The proposed dwellings would be accessed via a shared drive leading onto an existing private drive, close to its junction with the C2012. Due to the angle of the junction, the gradient of the private drive as it slopes upwards towards the road and the presence of existing hedgerows, visibility to the southeast for road users exiting the private drive onto the C2012 and for those approaching along it from that direction is extremely limited.
19. Whilst there is an informal layby close to the junction that might allow for drivers exiting the private drive to manoeuvre into a position where they could gain better visibility before entering the C2012, it was clear at my site visit that it is used for the informal parking of vehicles and that it would not be possible to execute the required turning manoeuvres when such vehicles are present.
20. Moreover, the layby is on land outside the appellant's control and there is little evidence to suggest that it would be possible to secure it as a turning space, or to prevent the future parking of vehicles within it. The presence of the layby therefore does not serve to mitigate the poor degree of visibility at the junction.
21. Whilst traffic levels on the C2012 appeared to be moderate at the time of my site visit, I nonetheless observed vehicles regularly approaching the junction from the southeast at speed. In combination with the lack of adequate visibility, this appeared to make it difficult for drivers and other road users to exit the private drive onto the C2012 safely.
22. I note that the Council has granted planning permission for a new access off the C2012 to Brynlllywarch Hall School. Whilst there may be some limited similarity between that access and the proposed access before me, it is evident that the school proposal included visibility improvements and other measures which, coupled with its location, mean that it does not provide a direct comparison. Nonetheless, I accept that the introduction of that access may lead to an increase in traffic flows on this part of the C2012 at certain times. Should that be the case, the issues I have identified at the appeal site would be exacerbated.
23. Notwithstanding the appellant's contention that the private drive is currently used without issue, given the above factors and the fact that no improvements to the junction are proposed, I find that the proposal would not provide an acceptable and safe form of access. Combined with the increase in the number of vehicles and other road users entering and exiting the appeal site that would arise from the proposal relative to its current use, this would result in unacceptable harm to highway safety.

24. I acknowledge that the number of vehicle movements to and from the appeal site arising from the proposal may be limited and may be less than if it were used for other purposes such as agriculture. However, the site is not currently being used for agriculture and I have little evidence to suggest it would be if planning permission is not granted, or that the related number of vehicle movements would be greater than those arising from the proposal, given the site's rural location and future occupiers' likely reliance on private vehicles to meet their everyday needs.

25. I therefore find that the proposal would conflict with policies DM13 and T1 of the LDP which, among other things, require that development ensures that highway safety for all transport users is not detrimentally impacted upon and that development proposals should ensure the safe and efficient flow of traffic for all transport users.

Other Matters

26. I acknowledge the circumstances which led to previous planning permissions at the site not being implemented, contrary to the appellant's aims. I also acknowledge the personal circumstances which underpin the appellant's intentions for the proposed dwellings and I accept that the proposal would offer some benefits for the appellant in this respect, would make a slight contribution to the overall provision of housing locally and would offer some degree of biodiversity enhancement as set out in the submitted Green Infrastructure Statement. However, the harm I have identified would be significant, such that I find it to be an overriding consideration in this case.

Conclusion

27. For the reasons given above and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

28. 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.

C Sweet

INSPECTOR