



Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 26/03/19

Ymweliad â safle a wnaed ar 26/03/19

gan **A L McCooey BA MSc MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 05.04.2019

Appeal Decision

Hearing Held on 26/03/19

Site visit made on 26/03/19

by **A L McCooey BA MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 05.04.2019

Appeal Ref: APP/T6850/C/18/3204841

Site address: The Slangs, Cascob, Presteigne, Powys, LD8 2NT

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

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Ella Hammel against an enforcement notice issued by Powys County Council.
 - The enforcement notice, numbered E/03/2018, was issued on 14 May 2018.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of the land from agricultural use to permanent residential use.
 - The requirements of the notice are: cease the use of the land for residential purposes and remove from the land the caravan and associated temporary structures brought onto the land for the purpose of that use (you may keep on the land any equipment which you use solely for agricultural/forestry use on that land).
 - The period for compliance with the requirements is nine months from the date that the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the enforcement notice be corrected by the deletion of Section 3 and its substitution with the following:

Without planning permission, the change of use of the land from agricultural use to a mixed agricultural and permanent residential use.

2. Subject to this correction the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Enforcement Notice (EN)

3. The plan accompanying the EN included all the land in the appellant's ownership. The breach of planning control is described as the change of use of the land from agricultural use to permanent residential use. This should have been change of use to a mixed residential and agricultural use because the agricultural use has continued. The parties agreed that this was an appropriate correction.
-

4. I must also consider the temporary structures referred to in the requirements of the notice. There is a normal canvas awning attached to the side of the caravan. A metal roof and timber sides have been placed around the awning for increased protection from the elements. These structures are fixed to 4 posts and are screwed together. They then rest on the ground and butt up against the caravan. The structural integrity of the caravan is unaffected by the awning, which the appellant confirmed could be readily separated. As a result of my inspections at the site visit, I am satisfied that the caravan is unaffected by the awning and could be transported from the site, with minimal works needed to separate it from the awning. Thus, it retains its status as a caravan. The small toilet hut is on skids and is not attached to the ground. I conclude that the description of the development as a change of use is accurate.

Reasons

5. The site extends to around 10.8 ha and for some distance east to west. It is bounded by the Church of St Michael to the east, the Cascob brook to the south and the road to Twiscob to the north¹. The entrance or access to the site is at the eastern end close to the churchyard. There is a polytunnel, 2 stables, 2 small shipping containers and other items along the northern boundary close to the access. The caravan/awning and toilet have been sited immediately adjacent to the boundary with the churchyard. The eastern end of the site is the most level part. The vast majority of the site slopes down towards the brook. There is a significant break in slope around halfway where it becomes a very steep slope down to a narrow level area by the brook. At the time of my site visit there were around 37 goats. Some in the polytunnel, some in a small field next to the brook and some at the western end of the site. I saw approximately 4 ducks, 4 chickens and 10 sheep.

Ground (a) – that planning permission should be granted

Main Issues

6. The main issues are:
- Whether there is a rural enterprise justification for the dwelling, having regard to local and national policies on new housing in the countryside; and
 - The effect of the development on the setting of the Church of St Michael, which is a Grade II* listed building.

Rural enterprise justification

7. Planning permission is sought for a temporary period of three years. For the purposes of planning policy, the site lies within the countryside where local² and national³ planning policies identify the provision of a dwelling to meet the proven need of a rural enterprise as an exception to a generally restrictive approach to new development.

¹ All Cardinal points given are an approximation for descriptive purposes only

² Policy H1 of the Powys Local Development Plan

³ Paragraph 4.2.36 Planning Policy Wales (PPW), Edition 10

8. The basic premise of the enterprise is that of sustainable agro-ecology on an integrated diverse holding capable of meeting the appellant's subsistence needs. The business plan sets out that the main product will be goat meat. The goats can graze supplemented by feed/hay with management of existing and proposed woodland and hedges for fodder. It is proposed to keep a small number of sheep to graze the steeper slope and some rabbits, chickens and ducks. The livestock will be supplemented by horticulture on 0.25 acres using raised beds and a polytunnel. Small-scale bee-keeping and mushroom production are also proposed. The appraisal refers to longer term plans for an orchard and soft fruits, although no account has been taken of this in the business plan. The system would be labour intensive with minimal use of machinery. Horses will be used for transport. The system would involve strip grazing using electric fences to create grazing areas with chickens following later to clean the land of parasites.
9. There is evidence of a firm intention to develop the enterprise in terms of the investment and work on site to date. I accept that there has been a significant investment in the purchase of the land, stock and equipment. It is argued that this is not a typical farm business due to the range of activities proposed to be carried out by the appellant in order to create an integrated diverse holding capable of meeting her subsistence needs. It is claimed that the standard assessment methodologies that have been developed to examine more traditional forms and larger holdings do not adequately reflect the range of elements in play on this holding. However, the case is made on the basis of an agricultural business. The relevant policy for this is contained in Technical Advice Note 6: Planning for Sustainable Rural Communities (TAN6) and the associated Practice Guidance (PG). The lifestyle choice of the appellant does not readily fit the guidance in TAN6; but this is the relevant guidance for any form of agricultural dwelling. I shall consider whether a new dwelling is justified by the business outlined in the appeal proposal in the light of the advice in TAN6 and the PG. I have considered the enterprise as proposed in the business plan and appraisal against the 4 tests set out in TAN6.

Functional test

10. The appellant refers to the welfare of the animals including husbandry. These are routine tasks that do not require an on-site presence. Shelters are already present on site, which can accommodate livestock during adverse weather conditions. Protection of crops can be ensured by adequate fencing. I do not consider that pests and disease damage overnight would be an emergency or serious issue. Irrigation and ventilation are routine tasks that do not require an on-site presence, especially with the use of the automated systems referred to in the appraisal. The high value ascribed to one animal or tray of plants is noted. However, I do not consider that such losses would be a significant proportion of the income of the enterprise. I fail to see how adverse weather events including frost protection could be an emergency situation requiring someone to live on site. This would be the appellant's choice and in this fails to meet the terms of TAN6 tests. Some of the examples of unexpected events referred to by the appellant related to other farms with different business models that are not directly comparable to the appeal proposal.
11. I accept that it may be necessary for a worker to be present on site during the period when animals are giving birth. The appellant argued that goat breeding would be spread out over the year and there would be a need to be present when sheep, chickens and ducks were giving birth. I consider that the timing of breeding is within the appellant's control and could be condensed into a manageable time period. This is realistic given the relatively small number of animals involved in the enterprise. Temporary accommodation for this period would address this need.

12. There is reference to minor problems with security of the site: trespass, incursions by dogs and predation by foxes, for example. I acknowledge that to live on the site would provide an additional level of security for the enterprise. However, I consider that adequate fencing and security systems could be employed to minimise such risks. In addition, security is not generally considered to be sufficient reason to justify a rural enterprise dwelling. On these grounds I attribute limited weight to security as a factor in favour of the residential use on the site.
13. I have carefully considered all the arguments put forward of the circumstances that would justify a functional need to live on this site. My overall conclusion on the functional test is that, while there could be some benefits to the business from the appellant living on site, none of them (individually or cumulatively) provide an essential need for a worker to live on the site on a permanent basis. The proposal fails the functional test.

Time Test

14. I recognise that many of those engaged in small rural enterprises work long and anti-social hours, and that their labour is often undervalued. In assessing labour requirements, it is therefore important to adopt a degree of standardisation which enables the assessment to be applied consistently. Adjustments may be necessary to reflect the degree of mechanisation. This leads me to consider the issue of normal working hours. The appraisal has used the appellant's own reporting rather than standard methodologies. Again, this reflects the appellant's own choice rather than a more efficient way to manage the holding. The main income source is from grazing livestock for meat production. A relatively small number of beasts are proposed and I am not persuaded by the appellant's evidence that the stated hours are or would be necessary for this type of activity. Notwithstanding the explanations made at the hearing which related to personal choice rather than a sound business model.
15. The appellant's answer to all criticisms is that the way she proposes to farm is in a sustainable manner using low impact agro-ecology. The standard assessment methodologies do not therefore apply, it is claimed. Much of the Labour inputs specified in the evidence are significantly higher than would be expected in a more conventional modern farming activity (based on some experience of this lifestyle choice) and no evidence of accurate record keeping has been provided. No standard assessment has been undertaken and no account has been made of the low stock levels. I appreciate that there are no standard man day estimates for goat rearing because it is a niche market. However, some account must be taken of the fact that stock can graze on land with minimal supervision. Having carefully considered the evidence I conclude that the labour inputs are based on a notional assessment of how the business would operate in a manner that effectively seeks to maximise labour hours. This would not be in accord with standard agricultural practice or the advice in the PG⁴ and obviously results in significantly greater potential labour requirements than commercial considerations could justify.

⁴ In paragraphs 4.12 to 4.17

Financial Test

16. The policy is concerned with business or commercial entities and the testing of their financial soundness or prospects derives from normal economic principles applied to businesses. It is not concerned with unconventional or subsistence enterprises. The practice guidance advises that the enterprise should be run as a business and be assessed on the basis of normal business performance indicators. It also advises that the absolute lowest threshold of remuneration will be the statutory minimum wage but, in the majority of cases, higher levels of remuneration will be appropriate.
17. I have considered the range of profit figures in the business plan in year 4. This would be significantly below minimum wage levels given the claimed hours that the appellant would work. This was acknowledged to be accurate by the appellant at the hearing. Even if the assessment was on a 40-hour week the profits would be still significantly below minimum wage levels. The appraisal is based on meeting the subsistence needs of the household, which is not the test for rural enterprise dwellings. The development proposal fails the financial test. Following on from these conclusions, I would question whether all the claimed labour requirements can be met by one person. There would be reliance on volunteer labour as it appears clear that the enterprise could not generate sufficient income to fund an additional agricultural worker, even on a seasonal basis.

The Other Dwellings Test

18. The appellant formerly had a farm or land in Carmarthenshire and it appears that stock and equipment have been relocated to this site when she purchased the farm. The appellant has chosen to purchase this land, having no connection with the area other than an elderly relative who lives 20 miles away. There are no other dwellings or buildings on the land. The objectors provided evidence of other dwellings available in the area including caravans. There was some dispute regarding whether a nearby caravan site is for short-term touring caravans only. The nearest dwelling for sale was around 6 miles away (around 15 minutes travel time). I consider that this represents a reasonable travel distance that would meet the functional needs of the enterprise.
19. I now turn to consider the other planning requirements test for dwellings on new enterprises as outlined in TAN6 and the other main issue identified above.

The effect of the development on the setting of the Church of St Michael

20. Sections 16 (2) and 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require the decision maker to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The setting of a listed building includes the surroundings in which it is understood, experienced and appreciated embracing present and past relationships to the surrounding landscape. Setting is not an historic asset in its own right but has value derived from how different elements may contribute to the significance of a heritage asset. TAN24: The Historic Environment and associated guidance requires an assessment of the effect of a proposal on the significance of the heritage asset. This approach facilitates a judgement of compliance with the above statutory test.

21. The significance of the Church is derived from its historical and architectural importance and its quiet rural location. The rural setting as part of a group of buildings and the open views from the churchyard are central to the setting of the listed building. The caravan and awning are sited immediately adjoining the boundary of the Churchyard. It has a significant adverse effect on the listed building contrary to the legal tests and policy guidance. This is unacceptable and would justify refusal of planning permission.
22. As the site is so large, there is scope to move the caravan so as not to affect the setting of the listed building. A siting at the western end of the land was discussed at the hearing. This would move the caravan to around 500m away from the churchyard. The Council and representatives of the Church agreed that this would largely address their concerns in respect of the impact on the listed building. I agree that this would reduce the impact on the setting of the listed building such that the development covered by the EN would have no effect on the setting of the listed building. This re-location of the caravan, etc. in the suggested revised location could be secured by conditions.

Other matters

23. The road leading to the site is 2 miles long. It is narrow with limited passing places. I note the concerns regarding its suitability for large vehicles and additional traffic. The evidence was that the highway authority had no objections to the development for a single residential use. I also note that the access to the site is currently via a field gate and any associated development to form the access is not before me. I confine my consideration to the matters within the EN before me.
24. I was informed that planning permission for a new barn on the land to the west of the site had recently been refused. Nevertheless, it remains the appellant's intention to move the caravan and all the existing agricultural structures to this part of the site. The appellant argued that the removal of all the agricultural development from the setting of the listed building would constitute a planning gain. This could be secured by way of a planning condition requiring all buildings, the caravan etc. to be sited within a defined area and removing permitted development rights on the remainder of the land. There are other issues with the creation of a farmyard, dwelling and barn at the west end of the site. These include the landscape and visual impact, the nature of the topography, how access would be achieved, etc. The caravan/awning is of limited scale and would have a limited impact on the landscape with appropriate siting. I make no comment on the acceptability of the farmyard development and buildings.

Conclusion on ground (a)

25. I conclude that the enterprise does not justify a dwelling for the reasons given above. The case is not proven and TAN6 advises that planning permission should not be granted for it. The case fails on several of the tests and so it would not be appropriate to grant planning permission for a temporary period to test the evidence. The re-location of the caravan as discussed would address the impact of the residential use on the setting of the listed building. The potential planning gain advanced by the appellant is a consideration. This must be tempered by the difficulties with the intended site for re-location and the fact that planning permission has not been granted for the required barn. I conclude that these benefits would not outweigh the failure of the proposal to meet the requirements of TAN6 as an exception to a generally restrictive approach to new development in the open countryside.

Ground (g) – that the time period for compliance is too short

26. The appellant requested that the period for compliance be increased to 12 months in order to find alternative accommodation and re-locate the business and animals to another site. The agricultural use of the site is not affected by the EN and so I see no justification to extend the compliance period. Nine months appears more than adequate to allow for the appellant to find alternative accommodation.
27. Thus having regard to all the relevant matters raised I find that the period for compliance is reasonable in relation to all the requirements set out in the corrected Notice, and therefore the ground (g) appeal must fail.

Overall Conclusion

28. I recognise the laudable sustainability objectives of the appellant. The advice in PPW regarding well-being through placemaking accords with the goals and objectives of sections 3 and 5 of the Well-being of Future Generations (Wales) Act 2015. Detailed policy continues in the Active and Social Places chapter which contains specific reference to Rural Enterprise Dwellings. My decision accords with the advice therein and hence the 2015 Act.
29. In having regard to the personal circumstances of the appellant I am mindful of the Human Rights Act 1998, including the requirement that decisions ensure respect for private and family life, and the Public Sector Equality Duty under the Equality Act 2010. However, I am satisfied that the refusal of planning permission and the period for compliance with the EN represent a proportionate and legitimate impact on the affected resident, in the public interest.
30. I have considered all the relevant matters raised and for the reasons given above, I conclude that the appeal should be dismissed and the EN should be upheld.

A L McCooey

Inspector

APPEARANCES

For the Appellant

Dr Simon Ruston BSc (Hons) MA PhD MRTPI	Agent
Mr Bill Knight	Geo & Co
Ms Ella Hammel	

For Powys CC

Ms Gemma Bufton BA MSc	Principal Planning Officer
Mrs Debra Lewis BSc BTP MRTPI	Built Heritage Conservation Officer

Interested Parties – objecting to the development

Mr Alex Glanville FRICS	Head of Property Services, the Representative Body of the Church in Wales
Cllr Hywel Lewis	Local Member Powys CC
Mr Howard Sandilands	Local Resident
Mrs Norma Olds	Church Warden
Mr Nigel May	Local Resident
Ms Marilyn Beese	Local Resident
Ms Susan Baron	Local Resident
Mrs Helen Gale	Local Resident
Mrs Jenny Cavan	Local Resident
Mr Phil Marron	Local Resident
Mr Roger Gibbins	Local Resident

Documents

Letters of Support

Confirmations of orders of goat meat

Particulars of Properties for sale in the area