
Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 12/03/19

Ymweliad â safle a wnaed ar 12/03/19

gan **Richard Duggan BSc (Hons)**
DipTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 16.05.2019

Appeal Decision

Hearing Held on 12/03/19

Site visit made on 12/03/19

by **Richard Duggan BSc (Hons) DipTP**
MRTPI

an Inspector appointed by the Welsh Ministers

Date: 16.05.2019

Appeal Ref: APP/T6850/A/18/3218736

Site address: Land adjacent to Llawnt Uchaf, Newmills, Newtown SY16 3NW

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 outline planning permission.
 - The appeal is made by Mr Andrew Davies against the decision of Powys County Council.
 - The application Ref P/2018/0567, dated 24 May 2018, was refused by notice dated 3 October 2018.
 - The development proposed is the erection of 1 rural enterprise dwelling, installation of septic tank and all associated works (some matters reserved).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline with all matters, except access, reserved for later determination. Notwithstanding the contradictory reference on the Council's decision notice to 'full planning permission', I have dealt with the appeal on this basis, treating the proposed block plan as indicative.
 3. The description of the development in the banner heading above is taken from the Council's decision notice, but with the addition of the word "works" as agreed at the hearing. I consider this to be more precise than the description set out on the planning application form.
 4. Following the adjournment of the hearing I undertook an accompanied site visit. At the site visit the Appellant submitted a revised Transfer of Management Agreement and a signed and dated planning obligation which sought to tie the appeal site to the agricultural holding. Due to the inclement weather at the time of the site visit and the isolated location of the appeal site it was not possible to have a constructive discussion about these documents. Therefore, the Appellant was given an opportunity to submit the documents within an agreed timetable after the hearing closed and the Council was then given a further time to provide its comments. These documents are discussed in more detail below.
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Main Issue

5. The main issue is whether the proposed development is justified on the basis of supporting the existing rural enterprise, having regard to the location of the site within the open countryside.

Reasons

Background

6. The appeal relates to an agricultural holding extending over approximately 133 acres with the primary activities relating to harvesting hay and the keeping of livestock, which includes 400 ewes, 15 rams, 20 cows and a bull. The Appellant is in partnership with his father Mr Michael Davies and trade under M.F & A.J Davies. The Appellant currently lives in the existing farm house at Llwynrhyddod but this arrangement is temporary given the Appellant's intention to start a family with his partner.
7. The statutory Development Plan is the Adopted Powys Local Development Plan (LDP), April 2018 with the most relevant policy being Policy H1, which amongst other things, seeks to focus new development within the development boundaries of towns and villages and to restrict new development in the open countryside outside development boundaries. The policy includes opportunities for agricultural workers and rural enterprise workers to be housed in suitable accommodation that supports their employment. Planning Policy Wales (PPW) Edition 10 states that new housing in the open countryside should be strictly controlled. One exception to this is where it is essential for a dwelling to house a worker in a rural enterprise.
8. National guidance on rural enterprise dwellings is set out in PPW and Technical Advice Note (TAN) 6: Planning for Sustainable Rural Communities. TAN6 sets out how proposals for permanent rural enterprise dwellings should be assessed and is supplemented by Practice Guidance on Rural Enterprise Dwellings. These specify a series of tests to be considered, including a. the *functional test*, b. the *time test*, c. the *financial test*, d. the *other dwelling test*, and e. *other normal planning considerations*. At the hearing the Council confirmed that the appeal proposals complied with tests a, d and e, and I agree with this assessment. The financial test (test c) is discussed in the following paragraphs.

Financial Test

9. The Appellant is justifying the proposed dwelling on the grounds that the management of the farm holding has been transferred to him by his father, and that the Welsh Government is seeking to encourage younger people to manage farm businesses. TAN6 seeks to fulfil this policy objective by allowing a second dwelling on established farms that are financially sustainable¹. In this regard, the Appellant confirms that the farm of Llwynrhyddod has been established for many years and has been passed on through several generations, and in the last 5 years the business has operated as a partnership between the Appellant and his father. Three sets of accounts for the business for the years ending 31 March 2015, 2016 and 2017 have been provided which show that the business created a profit of £5,576 in 2015, rising to £6,404 in 2016 and £10,008 in 2017. However, the Appellant confirmed at the hearing that he did not have the accounts for the 2018 period.
10. Although the accounts for 2015 – 2017 show a profit, no information has been provided which shows that the Appellant or his father have received any wages during

¹ Paragraph 4.5.1, TAN6

the time that the partnership has been in existence. The submitted accounts under the 'Partners Salary' column clearly show that no salaries have been taken out of the business in any of the years provided, and the Appellant could not provide any credible explanation for this when questioned at the hearing. Therefore, I cannot be satisfied from the evidence provided that the business has been financially sound for a number of years or has good prospects of remaining economically sustainable in the future. Therefore, the proposal fails the financial test set out within TAN6.

Transfer of Management

11. Although I have concluded that the proposal fails the financial test, I will go on to discuss the Transfer of Management Agreement of the holding. One of the requirements included within the Welsh Government's policy objective of encouraging younger people to manage farm businesses is where there are secure and legally binding arrangements in place to demonstrate that management of the farm business has been transferred to a person younger than the person currently responsible for management². In such cases, the younger person should demonstrate majority control over the farm and be the decision maker for the business.
12. It is clear to me that the Appellant has been an active partner in the farm since 2015 and has now taken control over the majority of the day to day running of the business. The Appellant confirmed at the hearing that the physical nature of the work has meant that his father is no longer able to be fully involved in the heavier farming activities and that the administrative and managerial duties, including decisions relating to the finances of the business, now falls within his duties.
13. A Transfer of Management Agreement dated 1 March 2018 was submitted by the Appellant with the appeal which confirms that the Appellant's father had transferred the administrative and operational responsibilities, the financial rewards and liabilities to the Appellant. However, I share the Council's concerns regarding this agreement in that Clauses 2 and 3 allows the transfer of management to be passed back to his father at any time. Therefore, the justification for the second dwelling based on the transfer of management in perpetuity fails.
14. Following the closure of the hearing the Appellant submitted a revised Transfer of Management Agreement which removed Clauses 2 and 3. I consider that the amended agreement is now acceptable and reaffirms my conclusion that the Appellant has taken over the control of the management of the farm holding and that he is critical to the continued success of the business. The Council has also confirmed that the revised transfer agreement is now acceptable.
15. As the appeal proposal complies with the first requirement set out within paragraph 4.5.1 of TAN6, there is no need for me to assess the second part; whether there is an existing functional need for an additional 0.5 or more of a full time worker and that person obtains at least 50% of a Grade 2 Standard Worker salary from the business.

Section 106 Agreement

16. In line with the guidance set out within TAN6³, it is important to ensure that the new dwelling is tied to the agricultural holding through the provision of a Planning Obligation under Section 106 of the Town and Country Planning Act, 1990 (as

² First bullet point, Paragraph 4.5.1, TAN6

³ Paragraph 4.5.3, TAN6

amended). The Appellant submitted a planning obligation following the closure of the hearing.

17. In order to comply with the guidance set out within TAN6, a section 106 obligation must be in place prior to the grant of planning permission. When determination of the application lies with the Council, it is able to make a resolution to grant planning permission upon completion of the required section 106 agreement, and then grant permission once the required legal agreement is in place. However, my decision must be either to grant or refuse permission on the basis of the documents and evidence before me.
18. Whilst the Appellant's planning obligation reads as a Unilateral Undertaking there is a requirement for the County Council to execute the Undertaking, but this has not taken place. In addition, the document does not include evidence of the Title Register, and the plans annexed to the document are not sufficiently clear to show the exact boundaries of the appeal site. With regard to the occupancy of the proposed dwelling, the document fails to ensure that the house would remain available for occupation by rural enterprise workers in perpetuity, and the obligations set out within the Third Schedule of the document do not conform with the wording set out within TAN6.
19. Therefore, in the absence of an effective legal undertaking there is no mechanism to tie the proposed dwelling to the agricultural holding or ensure control of the future occupation of the dwelling.

Conclusion

20. Having regard to the above, I cannot be satisfied that the business is financially sustainable and the absence of a completed legal agreement renders the proposal in conflict with the requirements of TAN6 and Policy H1 of the LDP.
21. 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 the Welsh Ministers' well-being objective of supporting safe, cohesive and resilient communities.
22. Having considered all other matters raised, I conclude that the appeal should be dismissed.

Richard Duggan

INSPECTOR

