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## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 18/06/19

gan K Sheffield BA(Hons) DipTP  
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 10.07.2019

## Appeal Decision

Site visit made on 18/06/19

by K Sheffield BA(Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 10.07.2019

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**Appeal Ref: APP/T6850/A/19/3225076**

**Site address: Penrhos Farm, Penrhos, Llansantffraid-ym-mechain, SY22 6QH**

**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 planning permission.
  - The appeal is made by Mr J Owen against the decision of Powys County Council.
  - The application Ref 18/0345/FUL, dated 17/07/2018, was refused by notice dated 14/03/2019.
  - The development proposed is change of use of agricultural building to B1/B8 use, erection of gates and associated works.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. As part of the appeal the Appellant submitted a Noise Report and a Transport Study. The Noise Report addressed the effect of the development on neighbouring residential properties whereas the Transport Study was in response to the concerns raised by the Council in respect of both the appeal building and another larger building on the site. The report included details of alterations to the access, introduction of passing places on the approach roads, improvements to a local road junction and a routing plan. It has been confirmed that neither report was before the Council when the planning application was determined.
3. According to current regulations concerning appeals the Appellant may not raise any matter which was not before the local planning authority at the time when the decision appealed against was made unless the Appellant can demonstrate that the matter could not be raised before that time, or that its not being raised before that time was a consequence of exceptional circumstances<sup>1</sup>. Further clarification is given in the Development Management Manual which confirms that there is no ability to make amendments to an application following a notice of an appeal against a decision except where the amendment corrects an error in the application and which does not affect the substance of an application<sup>2</sup>.

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<sup>1</sup> Section 11 of the Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017

<sup>2</sup> Paragraph 12.2.4

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4. A previous application for a development of the same description as the appeal was refused by the Council on similar grounds in May 2018<sup>3</sup>. Therefore the Council's concerns regarding highway safety and noise were known before the submission of the application subject of the appeal. It is noted that the Noise Report, dated 16 August 2018, was written during the time the application was under consideration by the Council. Whilst the Transport Report post-dates the Council's decision, it is clear from the evidence that the Council's highway advisors raised concerns at an early stage in the application process. I do not consider that the reports correct an error in the application but rather provide a substantial amount of additional information not before the Council when it determined the application. Furthermore, I am not satisfied that the failure to provide the information prior to the appeal was due to exceptional circumstances. I therefore consider that to accept the reports would be contrary to current regulations.
5. It is also necessary for me to consider whether the development is so changed by the additional information that to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation. Whilst in drafting its appeal submission the Council sought comments from its Highway and Environmental Health advisers, I am not aware that other consultees and interested parties have been officially notified of the reports and the proposed changes to the scheme. At the application stage there was significant interest from interested parties who supported and opposed the scheme in almost equal numbers. There has also been a significant number of representations in response to the appeal. Although some objectors refer to the reports it is not clear that all with an interest in the scheme are aware of the proposed changes to it. I am concerned that to take the additional information into account in determining the appeal would prejudice the rights of interested parties and in the interests of natural justice I have had no regard to it in reaching my decision.

### **Main Issues**

6. The main issues are the effect of the development on highway safety and the residential living conditions of the occupants of neighbouring properties by reason of noise and light.

### **Reasons**

7. The appeal site lies within open countryside. It forms part of a larger area of land and buildings within the control of the Appellant which is bounded to the east by the class C highway C2034, to the south and west by agricultural land and to the north by an existing haulage business and associated buildings with a licence to operate 15 HGV and 11 trailers.
8. The building subject of the appeal is one of several agricultural buildings and a farm house associated with the previous use of the land as a dairy farm. The proposed change of use of the building subject of the appeal has already taken place and it is being used for storage in association with the Appellant's toy supply business which specialises in large pieces of equipment for outside use such as climbing frames.
9. Several buildings and structures have been removed from the land and those to the west of the appeal building have been replaced by a large warehouse also used as storage for the business. It is this building which is covered in the Noise Report and is the subject of a planning application currently before the Council. The farm house is

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<sup>3</sup> Application Ref: P/2018/0326

occupied by the site manager and a portacabin acts as an office. There is an extant permission for the conversion of the barns to the east of the appeal building to a single dwelling<sup>4</sup>.

10. The Council has also served two Enforcement Notices in respect of the construction of a building for B1/B8 use and a material change of use of the land from agriculture to storage and distribution. Together these notices require the use of the site for B1/B8 use to cease, the large new building to be demolished and the land to be reinstated. Whilst I am aware of the planning history of the site and the outstanding application and enforcement notices, my determination is restricted to the appeal against the refusal of planning permission for the change of use of the existing building.

### *Highway Safety*

11. Policy T1 of the adopted Powys Local Development Plan 2011-2026 (the LDP) requires development proposals to "*manage any impacts to the network and the local environment to acceptable levels and mitigate any adverse impacts*". Policy DM13 only permits proposals where "*the development has been designed and located to minimise the impacts on the transport network – journey times, resilience and efficient operation – whilst ensuring that highway safety for all transport users is not detrimentally impacted upon*". It also requires development proposals to "*meet all highway access requirements, (for all transport users), vehicular parking standards and demonstrate that the strategic and local highway network can absorb the traffic impacts of the development without adversely affecting the safe and efficient flow of traffic on the network or that traffic impacts can be managed to acceptable levels to reduce and mitigate any adverse impacts from the development*".
12. The scheme subject of the planning application would fail to provide acceptable visibility splays at the entrance to the site. The splay to the south is crossed by close boarded fencing and to the north it crosses third party land. Whilst there is no information regarding the routing of the vehicles from and to the A483 trunk road, the junction of the C2034 and the C2035 is extremely sub-standard with poor visibility and alignment making it potentially unsuitable for any increase in movements of larger vehicles. This route is also of insufficient width to allow the free flow of two-way HGV traffic and there are no formal passing bays to accommodate such vehicles.
13. No data confirming current traffic flows has been submitted and although there is open space for the parking and manoeuvring of vehicles available within the site, this has not been demonstrated in the submissions.
14. It is acknowledged that HGVs originating from the existing haulage business which adjoins the site use the local highway network and it is accepted that a mix of vehicle sizes are used in association with the Appellant's business and some may not use the route described above. Notwithstanding this, on the evidence before me, I consider that the nature of the development is such that it would result in the potential for additional vehicular movements by a variety of vehicles some of which would use the route described. I find that this would result in an unacceptable risk to highway safety, contrary to Policies T1 and DM13 of the LDP.

### *Living Conditions*

15. The Council has raised concerns regarding the effect of the development on residential amenity regarding noise and artificial light. It has confirmed that no information

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<sup>4</sup> Planning application ref: P/2009/0956

accompanied the planning application regarding lighting or noise emitting activity in association with the appeal building. Although the occupation of the farm house is in association with the business, there are other dwellings a short distance away and in view of the extant planning permission there is a need to consider the potential occupation of the barns as a residential unit.

16. Whilst the Appellant has indicated that he would be content to forego the permission on the barn, he has not submitted a legal agreement to this effect. Furthermore, the building does not fall within the application site and the submitted drawing does not identify the land on which it sits as being within the control of the Appellant. There is therefore no mechanism available to me by which the permission on the barn could be revoked.
17. Notwithstanding this, I remain of the opinion that the evidence before me fails to confirm that the development would not cause harm to the living conditions of local residents by reason of noise and artificial light, contrary to Policies DM7 and DM13 of the LDP which seek to ensure that the living conditions of local residents are not unacceptably affected by noise, dust, air pollution, litter, odour, hours of operation, overlooking or any other planning matter.

### **Conclusions**

18. It is apparent from the evidence that the change of use of the appeal building is an integral part of the wider proposals required to facilitate the operation of the Appellant's business from the wider site. Taking a piecemeal approach in respect of the individual buildings rather than a comprehensive scheme for the whole site has complicated the situation. Nevertheless on the evidence before me I find that the development would be detrimental to highway safety and the residential living conditions of the occupants of neighbouring properties by reason of noise and light.
19. 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 (the WCFG Act). 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 Minister's well-being objectives as required by section 8 of the WCFG Act.
20. For the reasons given above, and having had regard to all other matters raised, the appeal is dismissed.

*K. Sheffield*

INSPECTOR