
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 30/10/19

gan A L McCooey BA MSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 14.11.2019

Appeal Decision

Site visit made on 30/10/19

by A L McCooey BA MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 14.11.2019

Appeal Ref: APP/T6850/A/19/3233193

Site address: Land east of Dyffryn, Chapel Lane, Llanymynech, Powys SY22 6EW

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 Lloyd against the decision of Powys County Council.
 - The application Ref 18/0804/OUT, dated 19 October 2018, was refused by notice dated 2 April 2019.
 - The development proposed is the erection of a dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. No representative of the appellant was present to afford access to the site. However, the gate to the land was open and I was able to enter and view the site. I am satisfied that the appeal can proceed to a decision on that basis.

Main Issue

3. The main issue is whether the proposed dwelling would be at risk of flooding contrary to national policy.

Reasons

4. The site is located at the edge of the settlement with access off Chapel lane. The boundaries are defined by a mixture of hedges and screen fencing. A stream runs along the boundary at a lower level. There are dwellings on either side set in spacious grounds. There are several wooden outbuildings and a static caravan on the site.
 5. The Powys Local Development Plan defines Llanymynech as a large village suitable for some growth. Policy DM5 states that development proposals must be located away from tidal or fluvial 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.
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6. Planning Policy Wales states that the priority should be to protect the undeveloped floodplain from development. Built development in floodplains should be wholly exceptional and limited to essential transport and utilities infrastructure. Technical Advice Note 15: Development and Flood Risk (TAN 15) classifies land into 3 categories (Zones A, B and C) according to risk of flooding. Zone C is subdivided into C1 – areas of the floodplain which are developed and served by significant infrastructure, including flood defences and C2 – areas of the floodplain without significant flood defence infrastructure where only less vulnerable development should be considered subject to application of the justification test and highly vulnerable development should not be considered¹. Paragraph 6.2 again recognises that highly vulnerable development such as residential dwellings should not be permitted within zone C2.
7. The Council's evidence considers the principle of development and issues such as the effect on neighbouring residents, biodiversity, heritage assets, highway safety and other issues. The conclusion is that the impacts would be acceptable subject to conditions. The detailed design and layout of the proposal would be considered as part of any reserved matters.
8. TAN 15 is accompanied by a series of Development Advice Maps (DAMs) which are based on the best available information considered sufficient to determine when flood risk issues need to be taken into account. The site is identified on the DAM as being within Zone C2. Welsh Government policy is that highly vulnerable development (dwellings) should not be permitted in Zone C2.
9. I note that the site is at the edge of the floodplain. The appellant has submitted several Flood Consequences Assessments (FCAs). However, the justification tests only apply to 'all other new development' and are therefore not relevant to highly vulnerable development in zone C2, as proposed in this case.
10. The FCAs conclude that the risk of flooding is very low and simple mitigation measures can eliminate that risk. I note that the FCA shows that the site would flood to a maximum of 300mm in the 1 in 1000-year event. The risk of the site flooding to 600mm or more is less than 1 in 1000 years. The site access would provide an escape route, as the lane is outside the floodplain. NRW were consulted on 3 occasions and having considered the amended FCA recommended that the risks of flooding could be acceptably managed in this case. The advice was that if the Local Planning Authority decided to grant planning permission, it should be subject to specified conditions applying the recommendations of the FCA. NRW did express some concerns regarding the submitted topographical survey and a historic photograph from 2000 showing flooding of the site. NRW also confirms that the DAM flood map will not be amended as a result of the FCAs.
11. I note the agent's reference to the findings of a recent Welsh Government review of TAN 15 by consultants and to the concerns expressed by councils about the strict tests in TAN 15. However, TAN 15 remains national policy until replaced or amended. The appellant claims that there is already highly vulnerable development (a residential caravan) on the site and the proposal would improve resilience. The Local Planning Authority confirms that there is no planning permission or Certificate of Lawful Use for the caravan. I therefore afford this claim of an established residential use on the site little weight

¹ Figure 1 on page 5

Conclusion

12. TAN 15 and Policy DM5 of the UDP clearly state that highly vulnerable development (which includes dwellings) in zone C2 should not be permitted. Whilst section 6 of TAN 15 does allow for a degree of flexibility to ensure that a reasonable balance is struck between the risks of flooding and the economic and social benefits of development, this does not extend to highly vulnerable development such as dwellings. Figure 1 states that highly vulnerable development should not be considered in Zone C2. The use of the phrase "should not be allowed" in paragraph 6.2 does not imply, as the appellant suggests, that this is discretionary. Overall TAN15 makes it very clear that highly vulnerable development will not be permitted in Zone C2.

13. Having taken into account all the information supplied on behalf of the appellant, I conclude that the proposal would be contrary to current Welsh Government policy contained in Planning Policy Wales and TAN 15, which aims to direct new development away from areas at risk of flooding. It would also be contrary to Policy DM5 of the UDP. For this reason, I conclude that the appeal should be dismissed. 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' revised well-being objectives to build healthier, more resilient communities and environments.

A L McCooey

Inspector