

Penderfyniad ar yr Apêl

Appeal Decision

Ymchwiliad a gynhaliwyd ar 15-16/03/16 & 16-17/06/16

Inquiry held on 15-16/03/16 & 16-17/06/16

Ymweliadau safle a wnaed ar 16/03/16 & 16/06/16

Site visits made on 16/03/16 & 16/06/16

gan Declan Beggan BSc (Hons) MSc DipTP DipMan MRTPI

by Declan Beggan BSc (Hons) MSc DipTP DipMan MRTPI

Arolygydd a benodir gan Weinidogion Cymru

an Inspector appointed by the Welsh Ministers

Dyddiad: 30/08/16

Date: 30/08/16

Appeal Ref: APP/B6855/A/15/3132964

Site address: at Former Clayton Works Site, Station Road, Pontarddulais, Swansea, SA4 8TJ.

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 (the Act) against a refusal to grant planning permission.
- The appeal is made by Spen Hill Developments against the decision of the City and County of Swansea Council.
- The application Ref 2013/1254, dated 28 August 2013, was refused by notice dated 20 February 2015.
- The development is described as the 'Construction of up to 53 residential units including public open space, public car parking (13 spaces), pedestrian access to Water Street, new vehicular access from Station Road and secondary emergency vehicle access onto High Street (outline)'.

Decision

1. The appeal is dismissed.

Application for Costs

2. At the Inquiry an application for costs was made by the City and County of Swansea Council against Spen Hill Developments. This application is the subject of a separate Decision.

Procedural and Background Matters

3. The application is for outline planning permission, with all matters other than access reserved for later determination. The site is located at Station Road, Pontarddulais where previously a tinsplate works was situated. Any buildings related to the previous use of the site have been demolished with all that remains being hard standing areas and remnants of buildings in the form of rubble. The site which is located adjacent to the defined town centre, is within the settlement boundary for Pontarddulais and extends to some 1.7 hectares. To the immediate east of the site is a residential development known as Clayton Court, to the west on the opposite side of Station Road is a doctors surgery whilst to the north is a building used by Pontarddulais Band, beyond which on the opposite side of road is land comprising the former Corus Works

which has been submitted for inclusion as part of a strategic residential site within the emerging City and County of Swansea Local Development Plan (LDP); the southern boundary of the site is bordered by commercial premises which front onto Water Street.

4. The Inquiry was scheduled to sit initially for 3 days but was deferred on the 16 March 2016 to allow the Council to consider additional technical evidence submitted by the appellant. The Inquiry resumed on 16 June 2016 for two days. I carried out an accompanied site inspection with both parties on the 16 March and an unaccompanied inspection on 16 June.

Main Issue

4. I consider the main issue to be whether the proposal satisfies the tests for highly vulnerable development in zone C1 set out in Technical Advice Note 15: Development and Flood Risk (TAN 15) and policies EV2 and EV36 of the City and County of Swansea Unitary Development Plan 2008 (UDP), and if not, whether there are material considerations sufficient to outweigh any conflict with TAN 15.

Reasons

TAN15 Tests

5. Planning Policy Wales (PPW), Chapter 13, aims to minimise and manage environmental risks and pollution and contains relevant policies on flood risk. Paragraph 13.2.3 expresses the basic principle of the policy: 'Meeting the Welsh Government's objectives for sustainable development requires action through the planning system to move away from flood defence and the mitigation of the consequences of new development in areas of flood hazard towards a more positive avoidance of development in areas defined as being of flood hazard'. Paragraph 13.4.1 says 'Development proposals in areas defined as being of high flood hazard should only be considered where: new development can be justified in that location, even though it is likely to be at risk of flooding; the development proposed would not result in the intensification of existing development which may itself be at risk; and new development would not increase the potential adverse impacts of a flood event'.
6. More specific guidance is given in TAN 15 at paragraph 5.1 (Fig.2) which describes all residential premises as highly vulnerable development. The appeal site is classed as being within an area of the floodplain designated as C1, i.e. 'areas of flood plain which are developed and served by substantial infrastructure, including flood defences'. TAN 15 sets out a precautionary framework to guide planning decisions. The principal aim of the framework is to direct new development away from those areas which are at a high risk of flooding. This principle is particularly important in the light of climate change, which is expected to significantly increase the risk of flooding over time. Where development has to be considered in such areas the tests¹ in TAN 15 in respect of justification and acceptable flooding consequences are applicable. These tests are broadly incorporated into Policy EV36 of the UDP; in addition Policy EV2 (ix) of the UDP refers to having regard to whether a proposal would be at risk from flooding.
7. Residential development should only be permitted within zone C1 if it can be justified in that location. Development will only be justified if it can be demonstrated that: (i)

¹ Tan 15: Paragraph 6.2

Its location in zone C is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement; or (ii) Its location in zone C is necessary to contribute to key employment objectives supported by the local authority, and other key partners, to sustain an existing settlement or region; and (iii) It concurs with the aims of PPW and meets the definition of previously developed land (PDL); and (iv) The potential consequences of a flooding event for the particular type of development have been considered, and in terms of the criteria contained in section 5 and 7 and Appendix 1 of TAN 15 found to be acceptable. The appellant accepts that in order for a proposal to be policy compliant with TAN 15 that both the justification and acceptability test must be satisfied.

8. As regards the second test referred to above, the appellant's planning witness accepted at the Inquiry that the proposal was not necessary to contribute to key employment objectives supported by the local authority; in this respect the proposal fails to meet the second test. There is no dispute between the parties that the proposed development satisfies the third test i.e. the site meets the definition of PDL, and setting aside the flooding consideration, I am satisfied the proposal concurs with the aims of PPW.
9. In regards to the first part of the TAN 15 (i) test, the appellant's planning witness accepted at the Inquiry that the proposal was not part of a local authority regeneration initiative. The issue between the parties is whether or not the proposed development is necessary to assist, or be part of a local authority strategy required to sustain an existing settlement within a C1 flood zone. A 'local authority strategy' is defined in TAN 15 as the development plan for the area (deposit version as minimum); in this instance the UDP. At the Inquiry it was confirmed the emerging Local Development Plan (LDP) was not yet at the deposit stage, and in any event, at its current stage it did not allocate the appeal site for residential development.
10. In broad terms the appellant argues the proposal is consistent with the UDP's spatial strategy (SS) as detailed at Part 1 C, which promotes sustainable development, seeks to make the best use of PDL, complemented by policies to improve transport and accessibility, and seeks to restrict the outward spread of the urban periphery. In particular attention is drawn to objective C (ii) of the SS which indicates that 'the plan' seeks to provide appropriate levels of growth in the other urban settlements in the plan area, such as Pontarddulais, in order to stimulate regeneration of old industrial communities, and to support local services, and objective C (v) which encourages the regeneration of brownfield, under used and vacant land and property within the urban area in preference to the release of green field sites.
11. The 'User Guide' of the UDP states that the SS forms part of Part 1 of the UDP which sets out the broad vision and aspirations for development, together with the overall strategy for pursuing them, whilst Part 2 translates these goals and objectives into more detailed policies and development proposals. I would tend to agree with the Council stance that whilst 'the plan' in its totality sought to provide for appropriate levels of growth in the settlement, however, it did so through specific allocations and the appeal site was not one of them. Contrary to the appellant's view that the proposed development has been demonstrated to be part of a local authority strategy required to sustain an existing settlement, I would interpret the SS as a broad framework which is put into effect by Part 2 policies and allocations. In regards to Objective C (ii), the appeal site was not allocated within the UDP for a specific purpose; such sites were deemed to be 'white land' were it was anticipated that the

existing use would continue and that if any development proposal affecting the site came forward during the plan period, as is the case here, then such a proposal would be considered against national planning policy guidance and relevant criteria based UDP policies, both of which have been referred to earlier. Consequently to my mind the proposal has not been demonstrated to be part of a local authority strategy required to sustain an existing settlement.

12. As regards objective C (v) whilst I accept that its reference to the regeneration of PDL is encouraged in preference to the release of greenfield sites, nonetheless, to my mind the overall objective seeks, to support 'regeneration initiatives' of which the appellant's planning witness accepted the proposal was not, and the objective reinforces the fact that in any event new housing allocations are already identified within the plan, of which the appeal site was not one. Under objective C (v), the proposed development has not been demonstrated to be part of a local authority strategy required to sustain an existing settlement.
13. Notwithstanding my views in regards to the proposal's non-compliance with objective C (ii) & (v), even if I were to accept the proposed development has been demonstrated to be part of a local authority strategy required to sustain an existing settlement, TAN 15 is quite clear that it must also be *necessary*. The Council drew my attention to the Kinmel Bay² appeal decision, which has parallels with the appeal proposal in that the land was PDL, within the settlement boundary and was well integrated with the existing settlement. In that instance the Inspector's view as accepted by the Minister, was that a proposed residential scheme in a Zone C1 location, whilst contributing to a development plan strategy to sustain the existing settlement, was not accepted as being necessary or required.
14. Contrary to the appellant's interpretation of the Kinmel Bay decision, I am of the opinion it has direct parallels to the appeal proposal; it is highly significant that the site's lack of allocation or specific identification in the UDP strategy indicates it is not necessary or required to sustain the settlement, which follows the same broad stance of Kinmel Bay; in this case to argue otherwise would run contrary to the overall policy stance in TAN 15 which seeks to direct new development away from areas of high flood risk, and as replicated in Policy EV36 of the UDP.
15. In addition the appellant refers to Policy HC1 of the UDP which identifies sufficient land to support the development of 14,668 new homes during the plan period, including Pontarddulais. The explanatory text that relates to HC1 states that 'Elsewhere limited infilling and rounding off *may* be acceptable' (my emphasis added). The appellant's has drawn my attention to the amplification of policy HC1 which refers to a number of windfall sites emerging during the plan period to increase housing supply but that these have not been included in Policy HC1; however, the housing need stated in policy HC1 is not reliant on windfall sites such as the appeal proposal. To my mind the proposal has not been justified under this policy, nor is necessary or required to sustain the settlement.
16. The proposed development is therefore unjustified development in regards to TAN 15 and Policy EV36 of the UDP; in addition it would also run contrary to Policy EV2 (ix) of the UDP. In light of the fact that I have concluded that the proposal is unjustified development in regards to TAN 15, and therefore unacceptable as a matter of principle, it is not necessary for me to give detailed consideration to the fourth test.

² Appeal Ref. APP/T6905/V/13/2203147 – Appendix L of Mr. Ferguson's evidence

However, even if I had found the scheme acceptable in terms of being justified, I share the Council's concerns in regards to the robustness of the submitted evidence relating to the acceptability criteria in TAN 15.

Other Benefits

17. I accept that the Council does not have a 5 year supply of residential land as required by PPW, however, this would not justify the proposal or indicate it is necessary or required under the UDP. Clearly the lack of a 5 year supply is a significant material consideration that weighs in favour of the proposal. Technical Advice Note 1: Joint Housing Land Availability Studies 2015 (TAN 1), states that the need to increase supply should be given considerable weight when dealing with planning applications provided that the development would otherwise comply with the development plan and national policies. However for the reasons given previously I do not consider the proposal has been demonstrated to be part of a local authority strategy required to sustain an existing settlement, nor is necessary or required to sustain that settlement. I consider the UDP needs to be read as a whole, and the lack of a 5 year housing land supply should not be used to justify development in otherwise inappropriate locations such as the appeal site. The benefits from the proposal in terms of the contribution to housing land supply do not outweigh the considerable conflict with the development plan and national planning policy.
18. I acknowledge the scheme would bring about benefits in terms of the reuse of PDL in preference to greenfield land, and notwithstanding the flooding related issue, would broadly accord with PPW in regards to being sustainable development. However, these benefits do not outweigh the considerable conflict with the development plan and national planning policy.

Other Matters

19. The appellant argues the emergence of the 'Pontarddulais North Strategic Site' (PNSS) as part of the draft LDP demonstrates that without the appeal site, the only means by which the Council can currently meet the identified housing need in Pontarddulais is to allocate sites which include greenfield land located outside the current settlement boundary and which are distant from community facilities and public transport. To my mind direct comparisons cannot be made between the appeal proposal and the PNSS, due to the fact that the appeal site is not allocated in the draft LDP as opposed to the PNSS, and is an entirely different type and scale of development to the PNSS which proposes approximately 720 dwellings, including employment uses and a link road; additionally the PNSS would not have highly vulnerable development such as dwellings within areas identified as being of high flooding risk. In any event the LDP is at an early stage of preparation and therefore the relevance of any potential sites identified carries little weight in this process.
20. The appellant draws comparisons between the Council's supportive stance in regards to adjacent Teilo Works site³ which appears at odds with their decision on the appeal proposal despite that site also being located within a C1 flood zone. The committee report relating to that decision does not refer to the justification tests set out in TAN 15 and instead concentrates on the acceptability test. I appreciate the similarities between the sites, however, notwithstanding the fact the Council supported that scheme without reference to the acceptability tests in TAN 15, that decision predated

³ Core Document 6 B

the Chief Planning Officers letter of January 2014⁴ which emphasised the importance of complying with all the criteria set out in paragraph 6.2 of TAN 15.

21. The appellant argues that having marketed the site for any form of development, a lack of offers demonstrated there are no other possible alternative or viable uses to the proposed residential use. However, the appellant has not provided any substantive details in regards to the marketing exercise that was undertaken, nor provided any substantive viability evidence demonstrating that the site is unviable for development other than housing. Whilst I appreciate the abnormal costs associated with redevelopment of the site are likely to restrict the number of possibilities as regards types of end user, nevertheless, I am not convinced that the residential development of the site is the only possible option for its redevelopment.
22. A number of third parties raised concerns in regards to the overdevelopment of the site, highway safety, and the ability of local services such as the adjacent doctors' surgery to cope with the additional population the scheme would attract. I note the Council's Head of Highways and Transportation raised no objections to the scheme based on highway safety; I have no substantive reason to take a contrary view. I note the Council did not have any objections to the scheme based on its density; based on my site visit, and the submitted details as indicated on site layout plan for the scheme, I consider the density of the scheme would not give cause for concern, nor appear out of character with adjacent residential development. In addition, whilst the adjacent doctors' surgery has raised concerns in regards to capacity issues of the practice to cope with additional patients, nonetheless, I am not aware that the Local Health Board raised any objections to the proposed development based on capacity issues for the settlement as a whole. I note the support for the scheme, due in part to its provision of car parking and the reuse of PDL, nonetheless, these benefits would not outweigh the concerns I have previously identified.

The Planning Balance

23. After taking account of the benefits that would arise from the scheme and all other matters raised, they do not outweigh the considerations that have led me to my main conclusion, which is an important matter of policy principle where the objective is to move away from flood defence and the mitigation of the consequences of new development in areas of flood hazard towards a more positive avoidance of development in areas defined as being of flood hazard. The balance clearly falls in favour of dismissing the appeal.

Conclusions

24. My overall conclusion is that the proposed development would be at risk from flooding and therefore would be contrary to national and development plan policies aimed at avoiding unnecessary development in areas at risk of flooding.
25. For the reasons given above, I therefore conclude that the appeal should be dismissed.

Declan Beggan

INSPECTOR

⁴ Mr Ferguson's Proof of Evidence at Appendix G

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Robert Williams Barrister

Instructed by Patrick Aron.

He called

Mr A Ferguson BSc (Joint Hons) MSc MRTPI

Principal Planning Officer

Mr R Copley HNC

Technical Specialist, Flood Risk
Analysis with Natural Resources Wales

FOR THE APPELLANT:

Mr Rhodri Williams QC

Instructed by DPP Planning

He called

Mr G Hooper BSc MSc MRTPI

Chief Executive Officer and Director at DPP

Mr S Dickie BEng MSc CEng CEnv CWEM
MCIWEM AMICE

Technical Director
Fairhurst Consulting Engineers

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Council's notification letter of 15 March 2016 and list of those notified.
2. Flooding Statement of Common Ground dated June 2016.
3. Technical Advice Note (TAN)15: Development and Flood Risk – Environment Agency Guidance for Staff.
4. Flood Depth Map for a 0.1% Event (1000 YR) – Proposed Scenario
5. Flood Maximum Velocity for a 0.1% (1000 YR) – Proposed Scenario M14
6. Flood and Coastal Risk management: Responding to TAN 15 related planning applications. Wales only.
7. A set of 10 flood modelling maps for a 100 CC event and 1000 YR event.
8. E mail from Mr A Ferguson to Mr G Hooper confirming the location of the emergency access road and internal circulation road are fixed at this stage, and the agreed wording for a noise related condition.
9. Modelling map for difference in flood depths pre and post development (1 in 1000 yr)
10. Written opening & closing remarks of Mr Robert Williams Barrister.
11. Written closing remarks of Mr Rhodri Williams QC.
12. Appellant's written response to 'Costs Application'.