
Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 27/10/16
Ymweliad â safle a wnaed ar 27/10/16

gan Joanne Burston BSc MA MRTPI
Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 04.11.2016

Appeal Decision

Hearing held on 27/10/16
Site visit made on 27/10/16

by Joanne Burston BSc MA MRTPI
an Inspector appointed by the Welsh Ministers
Date: 04.11.2016

Appeal Ref: APP/R6830/A/16/3146621

Site address: Llanbedr Hall, Lane from B5429 to Llanbedr Hall, Llanbedr Dyffryn Clwyd, Ruthin LL15 1UU

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 Rod Cox (Llanbedr Hall Estate) against the decision of Denbighshire County Council.
- The application Ref 16/2015/1047/PF, dated 14 October 2015, was refused by notice dated 9 March 2016.
- The development proposed is the replacement of Llanbedr Hall by erection of 13 3-storey dwellings.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is whether the proposal would be an acceptable form of development having regard to national and local policies relating to the countryside.

Reasons

Background

3. The appeal concerns the demolition of Llanbedr Hall and the construction of 13 three storey dwellings in a terrace, crescent shaped formation. The site lies on the edge of a small group of houses (some converted from the Hall's former outbuildings and some separately built) just outside the village of Llanbedr Dyffryn Clwyd. It lies in open countryside outside the settlement boundary and is within the Clwydian Range Area of Outstanding Natural Beauty (AONB).
 4. Both parties refer to the extensive planning history of the site, which has contributed to the present situation, and I consider it necessary to summarise the sequence of events at the outset.
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Planning history

5. Llanbedr Hall has a diverse history including its use as a tuberculosis hospital, hotel and more recently restaurant and flats. A Certificate of Lawful Use of Existing Development (CLUED), dated 2003¹ confirmed that the use of the ground, first and second floor areas of Llanbedr Hall as 11 number self-contained flats and the use of the ground floor area as a restaurant was lawful at the date of that application. In 2004 conditional planning permission was granted for the conversion of the restaurant area to 2 flats².
6. An appeal³ concerning the demolition of the Hall and its replacement with 9 family homes set into the gardens was dismissed in 2013. The Inspector stated in his decision the "*it is common ground that the Hall has been in mixed use for some years as 11/12 flats and a restaurant*". The appeal was dismissed for matters relating to the harm to the character and appearance of the area and that it would not conserve and enhance the natural beauty of the AONB.
7. More recently planning permission has been granted conditionally for the demolition of the Hall and its replacement with 9 dwellings⁴. A separate permission has also been granted for the demolition of the Hall and its replacement by 11 dwellings⁵. Neither of these permissions have been commenced.

Weight to be afforded to the planning history

8. It was argued strongly on behalf of the appellant that they have an established residential use for 13 dwellings within Llanbedr Hall based on the 2003 CLUED and planning permission ref 16/2004/1450/PF (the 2004 permission). Whilst it was not disputed that details relating to the pre-commencement conditions of the 2004 permission were not submitted, the appellant stated that these conditions did not go to the 'heart of the consent'. It was also contended that as the appellant had used the ground floor restaurant and associated areas as his living accommodation that the 2004 permission had been implemented⁶. Given these arguments I accept that the planning history is an important material consideration in this case.
9. A 'condition precedent' is one that goes to the heart of the permission and expressly prohibits development from taking place before a specific requirement is met. A breach of such a condition would mean that the development undertaken is development without planning permission, as the Council alleges in this case.

¹ Ref: 16/2003/1145/LE

² Ref: 16/2004/1450/PF

³ Ref: APP/R6830/A/12/2181528

⁴ Ref: 16/2014/1020/PF

⁵ 16/2016/0545

⁶ Doc 2 submitted at the Hearing stated that on the 28 May 2009 the restaurant area was identified as being the owners accommodation.

However, I consider that the conditions⁷ referred to by the Council merely require some action before occupation of the development, rather than going to the 'heart of the development'. Accordingly, if these conditions are not complied with, then the breach of those conditions could be enforced against but the development undertaken would not be development without planning permission.

10. The next question is whether the development commenced. To ascertain whether a planning permission is *lawfully* implemented, it is necessary to consider if works undertaken are in accordance with the permission and material in the sense of not being de minimis. This involves analysis of any similarities and differences between the works and approved plans, and the degree to which the works are useable for the development permitted.
11. Implementation of the 2004 permission would have entailed, amongst other things, changes to the physical layout of that part of the building, which were shown on the approved plans. The appellant suggests, and I agree from what I saw on my site visit that no physical works have been undertaken to convert the restaurant into 2 flats. Even if the appellant had occupied the restaurant area, it is clear that this occupation was not in the scope of the planning permission – the area was used as one unit rather than 2. As a matter of fact and degree, it appears that the occupation undertaken was intended to facilitate development of a different character to that approved. The evidence is not sufficient to show, on the balance of probabilities, that the 2004 permission was implemented. Accordingly, I attach minimal weight to the appellant's argument that the 2004 permission was implemented.

National and local policies relating to the Countryside

12. The appeal site lies outside any defined settlement boundary and in the countryside. In such locations, development is restricted to certain purposes including the redevelopment of existing dwellings, as set out in Policy RD4 of the Denbighshire County Council Local Development Plan 2013 (the LDP). This Policy position is also reflected in Planning Policy Wales Edition 8 (PPW), which confirms that new houses in the countryside, away from existing settlements recognised in development plans, must be strictly controlled.
13. LDP Policy RD4 is clearly aimed primarily at the replacement of individual dwellings. However, in the absence of a more appropriate policy, the aims and principles of the policy provide a reasonable framework for consideration of the appeal proposal. The Appellant argues it is for the replacement of 13 flats. However, as set out above, in the absence of any evidence to show that implementation of the 2004 permission was begun within the 5 year window, I consider it to have expired and so, for the purposes of this appeal, I have taken the lawful use of the building to be as 11/12 flats and a restaurant.

⁷ Condition 2 – None of the flats hereby permitted shall be occupied until provision has been made within the site for enclosed bin stores and drying areas, in accordance with details which have been submitted to and approved in writing by the Local Planning Authority.

Condition 3 – No dwelling shall be occupied until parking spaces and access thereto have been laid out in accordance with details to be submitted to, and approved in writing by the Local Planning Authority.

14. The proposal would not provide accommodation for agricultural, forestry or other essential workers and would exceed the number of dwellings to be replaced at Llanbedr Hall. The development would also not meet a local need for affordable housing. The proposal would therefore be in conflict with local and national planning policies in respect of new housing in the countryside.
15. Additionally, whilst the proposed development is not far from the cluster of houses within Llanbedr Dyffryn Clwyd, access to this village is undulating, along an unlit road with no pavement or cycleway. There would be a high probability that residents of the proposed dwellings would drive into neighbouring towns and villages, rather than walk or cycle, as a result of these conditions. Moreover, once in their cars, the potential for travelling further afield to access basic services would be enhanced, particularly given the limited number of services in Llanbedr Dyffryn Clwyd. This would be in conflict with PPW which states that new development is consistent with "*minimising the need to travel and increasing accessibility by modes other than the private car*".
16. This position is further reinforced by Technical Advice Note 6: Planning for Sustainable Rural Communities (TAN6), which states "*Development not intended to cater primarily for local needs should continue to be located in market towns, local service centres or clusters of smaller settlements where a sustainable functional linkage can be demonstrated and which are accessible by public transport*".
17. In reaching this opinion I acknowledge that the appellant benefits from planning permission for the replacement of Llanbedr Hall with 11 dwellings. However, the proposal before me would increase the resulting number of dwellings to 13, in an unsustainable location outside of the boundary of any settlement identified as an appropriate location where new residential development should go. The proposal is therefore contrary to RD4 of the LDP. There are no other considerations which indicate a determination other than in accordance with the development plan.

Conclusions on main issue

18. In light of the foregoing, the proposal would result in a development in the open countryside in an unsustainable location, with a heavy reliance on the private car, for which there are no exceptional circumstances. Therefore the proposal would be in conflict with PPW, TAN6 and LDP Policy RD4. Furthermore, the argument about whether the Hall building was actually used (or permitted) at some point for 12 (or even 13) flats, such use would clearly have been on the basis of policies for re-use of the existing building, and would not in itself make it right to approve new dwellinghouses in place of apartment units in this location.

Other matters

AONB

19. The site lies within an attractive landscape, recognised as an AONB. PPW states that the primary objective for designating AONBs is the conservation and enhancement of their natural beauty. Decisions affecting AONBs should favour conservation although it is also appropriate to have regard to the economic and social well-being of areas⁸.

⁸ PPW Edition 8 2016 Paragraph 5.3.5

It goes on to say that AONBs must be afforded the highest status of protection from inappropriate developments⁹.

20. However, at the Hearing there was no suggestion that the proposed development would harm the character and appearance of the area and from all that I have seen and read, particularly given that the proposed dwellings would be on a similar scale to the existing Hall and that they would be viewed against the backdrop of existing houses, there are no reasons to disagree. The proposal would therefore conserve the natural beauty of the AONB.

Living conditions

21. The proposed dwellings would gain access from a private track. It is already used as an access to the Hall and in the past it was used to access the Hall's associated restaurant. The addition of traffic from the proposed new residential use would result in its use by 13 households. This would affect a number of existing dwellings, located to the east of the appeal site. Indeed, for these properties there would be an increase in passing vehicles with an accompanying increase in noise and disturbance.
22. However these properties are set back from the access drive and the proposed parking areas and whilst no empirical noise data has been provided I do not consider noise levels would be such as to give rise to significant impacts on health or on quality of life.

Overall Conclusion

23. For the above reasons, and having taken into account all other matters raised, I conclude that the appeal should be dismissed.

Joanne Burston

INSPECTOR

⁹ PPW Edition 8 2016 Paragraph 5.3.6

APPEARANCES

FOR THE APPELLANT:

Mr Rhys Davies Agent, Cadnant Planning Ltd.

FOR THE LOCAL PLANNING AUTHORITY:

Mr David Roberts Planning Officer, Denbighshire County Council.

DOCUMENTS SUBMITTED AT THE HEARING

DOC 1 Appeal Notification Letter, submitted by the Council.

DOC 2 Council Tax and Housing Records for use of Llanbedr Hall, submitted by the appellant.

Richborough Estates