

Carl Sargeant AC / AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration



Llywodraeth Cymru
Welsh Government

Ein Cyf/Our ref: qA1152585
Eich Cyf/Your ref:

Treharne-Jones Associates Ltd
12 Carmarthen Road
Llandeilo
Carmarthenshire
SA19 6RS

12 June 2014

Dear Sir / Madam

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED): SECTION 77
APPLICATION BY MR AND MRS LAWRENCE
OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT (CONSTRUCTION OF 16
DWELLINGS)
LAND ADJACENT TO LLETYRDDERWEN, MYDDYNFYCH, AMMANFORD, DYFED,
SA18 2DY**

1. Consideration has been given to the report of the Inspector, Mr Robert Gardener BSc (Townplan) MRTPI, who considered the written representations submitted in respect of your clients application for outline planning permission for residential development (construction of 16 dwellings) at land adjacent to Lletyrdderwen, Myddynfych, Ammanford, Dyfed.
2. On the 15 August 2013 I directed under section 77 of the Town and Country Planning Act 1990 ("the 1990 Act") that the application be referred to the Welsh Ministers for their determination rather than be determined by the local planning authority. The reason for this direction was because the application raised planning issues which may be in conflict with national planning policies relating to development and flooding and, therefore, appeared to raise issues of more than local importance, which falls within the recovery of appeals criteria in paragraph 3.11.2 of Planning Policy Wales (Edition 5, November 2012) [now taken forward in Edition 6, February 2014]. Under the provisions of the Government of Wales Act 2006 the power to determine applications under section 77 of the 1990 Act has been transferred to the Welsh Ministers and, in this case, this power is being exercised by me, the Minister for Housing and Regeneration.
3. The application was dealt with by an independent planning Inspector via the written representation procedure and a site visit was made on 11 February 2014. The Inspector's conclusions on the merits of the application are set out in paragraphs 71-75 of his report. The Inspector recommended that outline planning permission be refused in the absence of a necessary Planning Obligation. For the reasons given below I

accept the Inspector's recommendation that outline planning permission be refused, albeit for different reasons.

4. The Inspector states that although he has been asked to report particularly on matters concerning development and flooding in relation to relevant policy considerations, the application has raised a number of other considerations. The Inspector comments on the principle of residential development on the application site before identifying what he considers to be the main issues in this case.
5. The Inspector considers the main issues are the implications of the proposal for:
 - a) flood risk;
 - b) highway safety; and
 - c) the ecology of the site.
6. I agree with the Inspector that these are the relevant issues.

Inspector's Conclusions

7. The Inspector's appraisal on the issues identified in paragraph 4 above are at paragraphs 30 to 53 of his Report with his overall conclusions, at paragraphs 71 to 75 of his Report, as follows:-

"The site is allocated for residential development in the statutory development plan. Although it is within Zone C2 flood risk area where such highly vulnerable development is not to be permitted, the FCA shows that the site would remain flood free in both the 1.0% and 0.1% flood events. There is no evidence that the development would increase flood risk elsewhere. The approach roads to the site would flood in those events and could experience flow velocity in excess of that recommended as safe. However, the risk that that would present could be managed by requiring an emergency evacuation plan to be agreed and put in place.

The highway objections to the application have not been substantiated and the significant ecological interests presented by the stream and boundary hedges and trees could be protected. Planning conditions could ensure that those matters identified as necessary and appropriate could be safeguarded. In these respects I do not consider that the proposal is in conflict with the development plan.

However, a required Planning Obligation is not yet in place which would allow the planning permission sought to be granted. Although I consider that, subject to conditions, the application proposal is otherwise acceptable, in the absence of the required Planning Obligation, I recommend that outline planning permission should be refused and the Applicants informed accordingly.

Alternatively, since the need for the Planning Obligation is not in dispute and the requirements appear to be agreed, the Welsh Ministers may wish to inform the Applicants and the Council that they are disposed to grant outline planning permission, subject to conditions, once a satisfactory Planning Obligation is in place. The requirements of such an Obligation are given at Note 6 of the Report presented to the Council's Planning Committee on 25/04/13.

It is not clear what form of Planning Obligation is required. The Council refers to it being an Agreement. Since a commitment may be required on the part of the Council to use the contributions for the purposes specified and within a reasonable period, that may be the case. Reaching agreement could prolong the process. A time frame

would need to be specified to ensure that matters are not unduly prolonged. I suggest 3 months."

8. The Inspector recommended that outline planning permission be refused in absence of a necessary Planning Obligation.

Conclusion

9. I agree with the Inspector's conclusions on the principle of the development (IR 31-34), highway safety (IR 47-48) and ecology (IR 50-53). I also agree with the basic principles applied by the Inspector relating to the s106 Planning Obligation. I do not agree with the Inspector, however, on issues relating to development and flood risk and the weight he has attached to the Flood Consequence Assessment (FCA) and the bearing this has on the determination of this application.
10. The Inspector refers to most of the appeal site being located within flood zone C2 as shown on the Development Advice Maps (DAMs) which are used in accordance with Technical Advice Note (TAN) 15; only part of the southern end of the site is not within zone C2. The Inspector states that in this case the site is shown to be potentially at risk from fluvial inundation from the nearby Afon Llŵchwr and from the stream which runs through the site. Section 6 of TAN 15 states that zone C2 is an area of floodplain without significant flood defence infrastructure and that highly vulnerable development, which includes residential development, should not be allowed within zone C2. Similarly, Policy GDC30 of Carmarthenshire Unitary Development Plan 2006 (CUDP) provides that highly vulnerable development will not be permitted in zone C2. The Inspector at paragraph 37 of his report acknowledged there was a conflict with planning policy and that the FCA would appear to be non-applicable and irrelevant to the proposal. Nevertheless, the Inspector at paragraphs 39-46 of his report considered the FCA and concluded that it was a 'forceful material consideration' which should be given considerable weight.
11. The tests in section 7, and Appendix A1.14 and A1.15, of TAN 15 are not applicable to highly vulnerable development in zone C2. I have noted; however, that the Inspector has used them as an aid to assessing actual flood risks as part of the balancing exercise in determining whether any material considerations, individually or collectively, outweigh the policy conflict.
12. The FCA discusses the risk of flooding at the site from the various sources (including surface water and fluvial flows) and the impact of the scheme on the risk of flooding. One of the main objectives of a FCA in accordance with paragraph A1.2 of TAN 15 is to develop a full appreciation of flooding on the development. The "Location Plan and Indicative Layout" accompanying the application identifies that an access point would be provided into the site crossing the existing stream running along the boundary. The FCA fails to identify the access point or consider the implications of a crossing or culvert, and how this may affect flood risk both to the site, and the neighbouring housing estate. Whilst I acknowledge that the application has been submitted in outline with all matters reserved it is not possible to conclude that the risk of flooding as a result of the development has been demonstrated in the FCA as required by A1.2 of TAN 15.
13. I note that the tests in Appendix A1.14 set out a threshold for residential development in zone C1, namely that it must not be liable to a 0.5% tidal flood (i.e. 200 to 1 chance in any year event) and a 1% fluvial flood (i.e. that fluvial flood with a 100 to 1 chance of occurring in any year). Assuming that the proposed development satisfies those

thresholds, and would therefore flood only in extreme circumstances, Appendix A1.15 sets out four additional tests. These tests assess the potential flooding that might occur in extreme circumstances and determine whether the most serious effects can be mitigated.

14. In brief, the FCA concluded that the site would remain flood free for all of the scenarios (1% event and 0.1% event), but that the adjacent highway would be at risk of flooding, and outside the tolerable conditions in A1.15 of TAN 15. I also note that the FCA only refers to 2 of the 4 tests in Appendix A1.15 of TAN 15 and that the Inspector based his conclusions on this assessment. In view of this, I do not consider that I could reasonably agree with the Inspector's conclusion that there would not be any unacceptable risk of actual flooding.
15. The FCA has identified that the adjacent highway could flood and would exceed the tolerable conditions in A1:15, and therefore it is necessary to demonstrate how people could be evacuated in order to demonstrate that the risk can be managed. The Inspector considers that flood emergency plans and procedures can be conditioned, but TAN 15 paragraph A1.12 clearly identifies that such plans should be in place in order to determine whether the residual risk of flooding is acceptable; this should be considered before planning permission is granted. The principle of the development should not be accepted without a full understanding of whether the flood risk can be acceptably mitigated.
16. I do not agree with the Inspector's conclusions on development and flood risk, not only because of the fundamental errors in the FCA in accordance with TAN 15, but more importantly policy does not allow a risk assessment to justify highly vulnerable development within flood zone C2, regardless of the actual flood risk on any given site.
17. TAN 15 (para 2.1) advises that flooding can place lives at risk, cause considerable personal trauma, and result in extensive damage to property. I disagree with the conclusions of the Inspector that the FCA is a material consideration which outweighs the conflict with planning policies relating to the prevention of highly vulnerable development in areas of the floodplain without significant flood defence infrastructure. The objective of policies relating to development and flood risk 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. As such, I disagree with the Inspector's conclusions on development and flood risk, but agree with his recommendation that outline planning permission should be refused, albeit for different reasons.

FORMAL DECISION

18. For the reasons given above, and in exercise of the power referred to in paragraph 2 above, I dismiss your client's application for outline planning permission (Ref. E/26726) and hereby refuse outline planning permission for residential development (construction of 16 dwellings) at land adjacent to Lletyrdderwen, Myddynfych, Ammanford, Dyfed.

19. A copy of this letter has been sent to Carmarthenshire County Council.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Carl Sargeant'.

CARL SARGEANT AM
Minister for Housing and Regeneration,
one of the Welsh Ministers.

Enc: Leaflets 'HC' & 'H'

Richborough Estates