

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 26/06/19

gan Iwan Lloyd BA BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 23.07.2019

Appeal Decision

Site visit made on 26/06/19

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 23.07.2019

Appeal Ref: APP/Q6810/A/19/3221957

Site address: Land to the rear of Tan y Celyn, Sŵn y Môr and Talardd, Dinas, Llanwnda, Caernarfon LL54 7YN

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 Snowdon Developments against the decision of Gwynedd Council.
- The application Ref C14/0386/24/LL, dated 20/08/2018, was refused by notice dated 12/02/2019.
- The development proposed is renewal of application C08A/0568/24/LL and C09A/0532/24/LL for the erection of 24 two storey residential dwellings, alterations to an existing entrance and the creation of an estate road.

Decision

1. The appeal is allowed, and planning permission is granted for renewal of application C08A/0568/24/LL and C09A/0532/24/LL for the erection of 24 two storey residential dwellings, alterations to an existing entrance and the creation of an estate road at Land to the rear of Tan y Celyn, Sŵn y Môr and Talardd, Dinas, Llanwnda, Caernarfon LL54 7YN in accordance with the terms of the application, Ref C14/0386/24/LL, dated 20/08/2018, and the plans submitted with it, subject to the conditions in the schedule below.

Application for costs

2. An application for costs was made by Snowdon Developments against Gwynedd Council. This application is the subject of a separate decision.

Procedural matters

3. The site visit was conducted as an access arranged visit and I proceeded to inspect the appeal land unaccompanied. Following the inspection, I was approached by interested parties and I explained the way I conducted the visit. I was satisfied that I saw from the visit all that was necessary to decide the appeal and I consider that no injustice would arise to any party involved in this appeal.
4. The appeal was lodged as a failure to determine the application within the prescribed period, but under the current appeal regulations the Council can issue its decision within a period of the appeal being lodged. In this case it has done so, and the appeal

is determined accordingly against a refusal of planning permission. An agreed list of plans and documents have been submitted by the main parties.

5. The Health and Safety Executive has been consulted as part of the appeal process and it raises no objection to the appeal development.

Main Issue

6. The Council refused the application on the basis that the proposed open space would not be suitably located, the layout would be unacceptable given the proximity to the gas supply pressure reducing station and the narrow-gauge railway and the risks to children.
7. The main issue is therefore whether the proposed open space is suitably located having regard to the safety of occupants of existing and future residents of the site and the locality.

Reasons

8. The appeal site is a field of some 0.9ha to the south-east of residential properties, adjacent to a Class III highway, a gas supply pressure station and a narrow-gauge railway. The Anglesey and Gwynedd Joint Local Development Plan (JLDP) settlement boundary of Dinas dissects the appeal field. The proposal which was revised following the changed status of the site under the JLDP provides 12 affordable housing units amongst a total of 24 housing units. The Council raise no objection to the principle of the development only to its layout in relation to the provision of open space which amounts to 0.14ha. The proposed open space is shown on the south-east boundary of the field adjacent to the gas supply pressure reducing station and the narrow-gauge railway. The gas supply pressure reducing station and a buried pumping station both have development exclusion zones within the site which in turn avoid the proposed housing development. However part of the open space is included in these exclusion zones.
9. The south-west, south and south-eastern boundaries of the site are bordered by established landscaping, trees and hedge. These boundaries lie adjacent to the railway line and gas supply station. Landscaping is also proposed along these boundaries together with a high anti-climb fence. These measures and existing landscaping should provide enough and satisfactory means to protect the residents who would use the open space facility from the adjacent infrastructure. No single provision can guarantee safety but with these measures in place there is no compelling evidence to demonstrate that the health and safety of the public would be harmed by the proposal to site the open space in this location. Policy PCYFF 2 of the JLDP indicates that developments should not have an unacceptable adverse impact on the health and safety of occupiers of local residences. That threshold of unacceptable adverse impact has not been demonstrated by the evidence presented in this appeal.
10. There is also criticism over the layout of the development that the open space has been positioned to the rear of the site, but it appears that it makes best use of the land where no built development could take place because of the exclusion zones. I note that interested parties have offered alternative layouts, however, for the reasons I have outlined there is no compelling evidence to indicate that the proposed layout is unsatisfactory and unsuitable or harmful to the safety of occupants of existing and future residents of the site and the locality. I consider that JLDP Policy PCYFF 3 is met in relation to criterion 4 – that the proposal achieves and creates attractive and safe places and public spaces.

11. Despite concerns from interested parties and the Council there is no objection raised to the development from the Welsh Highland Railway the Council's Building Control Unit and Wales and West Utilities (WWU) (Gas)¹. The Council refer to the WWU response and its attached general conditions that further guidance must be sought from the Health and Safety Executive (HSE) and Local Authority Planning team regarding the proximity distance to high pressure pipelines. The Council indicates that the appellant should have consulted the HSE as the local authority is not responsible for risk assessments.
12. Consultations on planning applications are carried out by the local planning authority, nevertheless, the HSE was consulted as part of the appeal proceedings and it raises no objection to the proposed development. There is therefore no planning basis to oppose the development having regard to the main determining issue in this appeal.
13. The Council questions the extent of the open space provision despite that this was not included in the reason for refusal. The Council's Joint Planning Policy Unit confirms that the open space provision is compliant with Policy ISA 5, and the then published guidance Supplementary Planning Guidance: Housing Developments and Open Spaces of Recreational Value. I am satisfied that the provision accords with the standard, and I have no compelling evidence as to why the open space is deficient in these terms.
14. I note that the Council has indicated that the proposal fails to meet paragraph 3.23 of Planning Policy Wales Technical Advice Note 16: Sport, Recreation and Open Space (TAN 16), and interested parties have referred to Technical Advice Note 12: Design (TAN 12). However, the TAN 16 reference refers to preparing development plans and the need for local planning authorities to seek to involve children and young people in planning provision for open space for new housing developments. In relation to TAN 12, in my view, the proposed open space location provides security, natural surveillance and an attractive safe public space.
15. The Council refers to the Children's Right to Play Safely in their Areas based on Article 31 of the United Nations Convention on the Rights of the Child. However, the proposal would not deny a child a right to rest and leisure to engage in play/recreational activities nor fail to respect/promote the right of the child to participate fully in cultural/artistic life or deny equal opportunities for cultural and recreational leisure activity. I consider the proposal provides greater opportunity and provision for children to use the open space where there has been a previous deficit of such provision locally.
16. Other concerns relate to drainage, lack of footpaths and that there is not an appropriate mix of houses on the site. The proposal provides a mix of houses market and affordable homes and there is no objection from the Council on this point or from the statutory consultees on drainage and highways. I have no evidence that harm would arise in relation to these matters and planning conditions can be imposed to ensure highway issues and drainage matters are addressed by agreement with the Council.

Conclusions

17. I conclude that the proposed open space is suitably located having regard to the safety of occupiers of existing and future residents of the site and the locality. The

¹ Appendix A of the Appellants final comments response from Welsh Highland Railway Safety and Development Manager and Appendix B Planning Committee Report 11/02/2019 paragraph 4 consultations.

development accords with the development plan and is therefore sustainable development.

18. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (the WBFG Act). In reaching my decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives set out in section 8 of the WBFG Act.
19. I intend to allow the appeal and grant planning permission subject to conditions. I have considered the Council's list of suggested conditions and these have been included save for minor re-wording to ensure implementation of the schemes to be agreed with the Council. An agreed list of the submitted plans has been provided by the main parties. Condition 3 is altered to ensure that samples of roofing materials are provided for approval by the Council. The numbers of affordable housing units are specified in condition 13 and are to be agreed in detail with the Council and this change of wording ensures that the agreed provision is provided on the site. The reasons for imposing the conditions are set out below.
20. I conclude that the appeal be allowed.

Schedule of conditions and reasons APP/Q6810/A/19/3221957

- 1) The development shall begin not later than five years from the date of this decision.
Reason - To comply with Section 91(3) of the Town and Country Planning Act, 1990.
- 2) The development shall be carried out in accordance with the following approved plans and documents: Plans numbered C936.001A (location plan), C936.003E (proposed site layout), C936.004D (boundary treatment plan), C936.005A (street elevation 1-2), C936.006A (street elevation 2-2), C936.007A (3D view 01), C936.008A (3D view 02), C936.009A (3D view 03), C936.010A (3D view 04), C936.011A (house type 1), C936.0016A (house type 2a), C936.0021 (house type 2b), C936.0026A (house type 3), C936.0031A (house type 4), C936.0036A (house type 5) and CW/8630-P-TS.
Reason - To define the scope of the planning permission and to ensure that the development is carried out in accordance with the approved plans.
- 3) Prior to the construction of the dwellings hereby approved details and/or samples of the materials to be used in the construction of the external roof surfaces of the dwellings shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
Reason – In the interests of the visual appearance of the area having regard to Policy PCYFF 3 of the Anglesey and Gwynedd Joint Local Development Plan.
- 4) No dwelling shall be occupied until the access has been constructed in accordance with the approved plans.
Reason – In the interests of highway safety having regard to Policy TRA 4 of the Anglesey and Gwynedd Joint Local Development Plan.

- 5) The estate road shall be completed to a rolled and blinded hardcore finish with the surface water drainage system complete and in working order before any work is commenced on the dwellings which it serves.

Reason – In the interests of highway safety having regard to Policy TRA 4 of the Anglesey and Gwynedd Joint Local Development Plan.

- 6) The estate road and footways shall be surfaced to basecourse standard before any dwellings which it serves are occupied.

Reason – In the interests of highway safety having regard to Policy TRA 4 of the Anglesey and Gwynedd Joint Local Development Plan.

- 7) The estate road shall be kerbed and the carriageway and footways finally surfaced and lighted before the last dwelling on the estate is occupied or within 2 years of the commencement of the work on the site or such any other period as may be agreed with the local planning authority.

Reason – In the interests of highway safety having regard to Policy TRA 4 of the Anglesey and Gwynedd Joint Local Development Plan.

- 8) No development approved by this permission shall be commenced until a scheme for the provision and implementation of a surface water regulation system has been submitted to and approved in writing with the local planning authority. Such a scheme shall be implemented prior to the construction of any impermeable surfaces draining to the system.

Reason – To prevent the increased risk of flooding having regard to Policies ISA 1, PCYFF 5 and PCYFF 6 of the Anglesey and Gwynedd Joint Local Development Plan.

- 9) No development shall commence until a foul water drainage scheme to accommodate the foul water discharge from the site has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.

Reason - To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and to ensure no pollution or detriment to the environment having regard to Policies ISA 1, PCYFF 5 and PCYFF 6 of the Anglesey and Gwynedd Joint Local Development Plan.

- 10) Before any development commences a detailed landscaping and tree planting scheme, to include the re-located hedge along the northern boundary of the site, shall be submitted to and approved by the local planning authority. The scheme shall also include indications of all existing trees and hedgerows on the site and details of any retained together with measures for their protection during the course of the development.

Reason - In the interests of the visual appearance of the area having regard to Policy PCYFF 4 of the Anglesey and Gwynedd Joint Local Development Plan.

- 11) All planting, seeding or turfing comprised in the approved details of landscaping and tree planting shall be carried out in the first planting and seeding seasons following the occupation of the dwellings or the completion of the development whichever is the sooner. Any plants or trees which die within 5 years from the date of completion of the development, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of

similar size and species unless the local planning authority gives written consent to any variation.

Reason - In the interests of the visual appearance of the area having regard to Policy PCYFF 4 of the Anglesey and Gwynedd Joint Local Development Plan.

- 12) Notwithstanding the provisions of Article 3 of Schedule 2, Part 1, Classes A, B, C, D, E, F, G and H of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification) no buildings/alterations/extensions as specified in those classes of the Order shall operate so as to permit within the curtilage of the 12 affordable dwellings any development other than those expressly authorised by this permission.

Reason – To ensure that the size of the affordable housing units remains affordable for future occupants for those in need of affordable housing in compliance with Policy TAI 15 of the Anglesey and Gwynedd Joint Local Development Plan.

- 13) The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex B of Planning Policy Wales Technical Advice Note 2: Planning and Affordable Housing or any future guidance that replaces it. The scheme shall include:

- i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 12 housing units;
- ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
- iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing;
- iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
- v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

Reason – To ensure that provision is made for affordable housing within the development to meet the affordable housing need of the locality and to ensure that the housing provision is managed to meet the future needs of occupants of the development who qualify the occupancy criteria for affordable housing in compliance with Policy TAI 15 of the Anglesey and Gwynedd Joint Local Development Plan.

- 14) The development shall be carried out in accordance with the recommendations in paragraph 4.3 of the Preliminary Ecological Appraisal dated August 2018 prepared by Etive Ecology Ltd.

Reason – To safeguard protected species having regard to Policy AMG 5 of the Anglesey and Gwynedd Joint Local Development Plan.

- 15) No development shall commence until a non-invasive plant management programme and timetable for implementation is submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved programme and timetable.

Reason – To ensure eradication of an invasive species having regard to Policy AMG 5 of the Anglesey and Gwynedd Joint Local Development Plan.

- 16) No development shall commence on site until details of a pollution prevention plan and implementation timetable is submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved programme and timetable.

Reason – To safeguard nearby watercourses from pollution having regard to Policy PCYFF 2 of the Anglesey and Gwynedd Joint Local Development Plan.

- 17) No building work associated with this permission shall take place before 08.00 hours nor after 18:00 hours on weekdays, and before 08:00 hours and after 13:00 hours on Saturdays, nor at any time on Sundays and Bank Holidays.

Reason – In the interests of the living conditions of nearby residents in relation to noise and disturbance having regard to Policy PCYFF 2 of the Anglesey and Gwynedd Joint Local Development Plan.

- 18) No development shall commence on site until a Construction Management Statement to include details of parking for construction vehicles, storage of goods and equipment along with dust and dirt mitigation measures has been submitted to and approved in writing by the local planning authority. The approved Construction Management Statement shall be adhered to throughout the construction period.

Reason – In the interests of the living conditions of nearby residents in relation to noise, dust, fumes and disturbance having regard to Policy PCYFF 2 of the Anglesey and Gwynedd Joint Local Development Plan.

- 19) No development shall commence on site until details of Welsh place names for the estate/streets together with a bilingual signage scheme to deal with all operational signage promoting and identifying the development on and off site have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the scheme.

Reason – To ensure that cultural and language characteristics are safeguarded in compliance Policy PS 1 of the Anglesey and Gwynedd Joint Local Development Plan.

Iwan Lloyd

INSPECTOR