

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 22/10/20

gan **Richard E. Jenkins, BA (Hons) MSc MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 1st December 2020

Appeal Decision

Site visit made on 22/10/20

by **Richard E. Jenkins, BA (Hons) MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 1st December 2020

Appeal Ref: APP/K6920/A/20/3257989

Site address: Land Adjacent to Tir Y Berth Farm, North of Cefn Hengoed, Caerphilly, CF82 8LD

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 and Mrs Evans & Franks against the decision of Caerphilly County Borough Council.
- The application Ref: 18/0160/OUT, dated 16 February 2018, was refused by notice dated 20 February 2020.
- The development proposed is residential development up to 131 No. dwellings and associated works.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline, with all matters reserved for subsequent determination. There is sufficient information provided to deal with the appeal on this basis.

Main Issues

3. These are: whether the development is acceptable in principle, having particular regard to the planning policy framework and other material considerations; and the effect of the proposed development upon the designated Green Wedge, including whether any identified harm would be clearly outweighed by very exceptional circumstances.

Reasons

4. The appeal relates to two undeveloped parcels of agricultural land located to the north of Cefn Hengoed in Caerphilly County Borough. The fields are generally enclosed and interspersed by mature trees and hedgerows and are bordered to the north by agricultural fields and Tir Y Berth Farm. The western boundary of the site is flanked by Hengoed Road, with agricultural fields beyond, and the eastern boundary adjoins an area of woodland and scrub vegetation. The full extent of the southern boundary immediately abuts the existing residential properties located on the northernmost edge of Cefn Hengoed.

5. The appeal proposal seeks outline planning permission for residential development and associated works. The description of development indicates that the scheme would make provision for some 131No. residential units, with a requirement for 25% of those properties to be affordable housing as defined by national planning policy¹. Despite the fact that all matters are reserved for subsequent determination, the '*Proposed Site Plan*' indicates that access would be achieved via an existing unclassified road located to the north of the site, directly off Hengoed Road.

Principle of Development

6. The appeal site lies outside of the settlement boundary defined by the adopted Caerphilly County Borough Council Local Development Plan up to 2021 (Adopted 2010) (LDP) and is therefore classified as countryside for the purposes of planning policy. Policy SP5: '*Settlement Boundaries*' of the adopted LDP advises that the identified settlement boundaries seek to: *define the area within which development would normally be allowed; promote the full and effective use of urban land and thus concentrate development within settlements; prevent the coalescence of settlements; and prevent inappropriate development in the countryside*. Policy CW15: '*General Locational Constraints*' expands on such principles, with criterion 'C' setting out the types of development that would be permissible outside of settlement boundaries.
7. There is little doubt that the development proposed in this instance would comprise inappropriate development in the countryside for the purposes of the adopted LDP. Indeed, it would be located outside the area within which such development would normally be allowed and would inevitably alter the rural character of the site. It is also clear that the development would not fall within the types of development listed as permissible outside of settlement boundaries in criterion 'C' of Policy CW15 and it would do little to promote the full and effective use of urban land. The development would, therefore, conflict with the development strategy advocated through the adopted LDP and, in particular, the thrust of Policies SP5 and CW15.

Green Wedge

8. Green Wedge designations are identified through Policy SI1 of the adopted LDP, with the appeal site identified as part of the Green Wedge designated under Policy SI1.7: '*Penpedairheol, Gilfach and Tir y Berth*'. The LDP states that its Green Wedge designations seek to define and maintain open spaces between urban areas to prevent coalescence. The reasoned justification to that policy goes on to state that, within such designations, development proposals that would not maintain the open character of the Green Wedges should be resisted. Generally consistent with such advice, Planning Policy Wales (Edition 10², 2018) (PPW) clarifies that one of the most important attributes of Green Wedges is their openness. That document goes on to state that, in order to maintain openness, development within a Green Wedge must be strictly controlled.
9. There is little doubt that the development proposed in this instance would constitute inappropriate development within the Green Wedge, as defined by PPW. It would represent a physical incursion into both the countryside and the designated Green Wedge and would undoubtedly cause material harm to the Green Wedge designation by failing to maintain its openness. In coming to this conclusion, I am mindful that the concept of openness is not one that could be effectively mitigated by a scheme of

¹ Planning Policy Wales (Edition 10, 2018); and Technical Advice Note 2: Planning and Affordable Housing (TAN2)

² As amended - WG Letter to LPAs dated 26 March 2020 refers

landscaping. In addition to such considerations it is material to note that, whilst the development would not result in the coalescence of Cefn Hengoed and Penpedairheol, it would reduce the gap between those settlements and, thereby, run counter to the purpose of including the land within the designation. The development would, in this respect, conflict with the aims of Policy SI1.7 of the adopted LDP. In accordance with the advice contained within PPW, such harmful impacts merit substantial weight in the planning balance.

10. Nevertheless, whilst PPW clearly provides for a presumption against inappropriate development within Green Wedges, it also states that inappropriate development should not be granted planning permission except in very exceptional circumstances where other considerations clearly outweigh the identified harm. It is therefore necessary to consider whether the arguments advanced in favour of the proposed development amount to such very exceptional circumstances. The principal arguments in this respect relate to the contribution that the development would make to the local housing land supply.
11. The adopted LDP makes provision for up to 10,269 dwellings to meet a housing requirement figure of 8,625 dwellings. The oversupply constitutes a flexibility allowance in recognition of the fact that not all sites will be developed during the plan period. Whilst the Plan will remain in effect until it is superseded by a subsequent revised LDP³, it is relevant in considering such matters to note that the Plan was adopted with an end date of 2021. I have been advised that an Annual Monitoring Report (AMR) was approved by the Council in October 2019, with that document identifying a shortfall in housing delivery. As such, it recommended that a review of the LDP is commenced and that, in the period up to the adoption of a replacement Plan, the Council should continue to address the shortfall in housing supply through proactive action. This is said to include proposals for new residential developments being considered on their own particular planning merits, with particular regard to the need to increase housing land supply in accordance with national policy.
12. It is pertinent to note however that there is no longer a requirement for Local Planning Authorities (LPAs) to make available a five-year supply of land for housing. This was removed through relatively recent revisions to PPW and the associated revocation of Technical Advice Note 1: *Joint Housing Land Availability Studies* (JHLAS) (TAN1)⁴. Nonetheless, the primary objective of national policy to ensure that the planning system contributes towards the delivery of sustainable development remains extant⁵. Indeed, PPW advocates a presumption in favour of sustainable development in accordance with the development plan, unless material considerations indicate otherwise. This is to ensure that social, economic, cultural and environmental issues are balanced and integrated⁶ and is consistent with the thrust of Section 38(6) of the Planning and Compulsory Purchase Act (2004).
13. Deliverability also remains a key element of national policy, with PPW stating that the planning system must identify a supply of land to support the delivery of the housing requirement and focus on the delivery of the identified housing requirement⁷. Paragraph 4.2.10 of PPW expands on this, stating that the supply of land to meet the housing requirement proposed in a development plan must be deliverable, with the

³ As the provisions of the Planning (Wales) Act 2015 do not have retrospective effect

⁴ WG Letter to LPAs dated 26 March 2020 refers.

⁵ PPW, Paragraph 1.2

⁶ PPW, Paragraph 1.17 refers

⁷ Paragraph 4.2.2

ability to deliver such requirements demonstrated through the use of a housing trajectory. Under delivery against a trajectory may require a specific early review of the development plan, and LPAs should also identify where interventions may be required to deliver the housing supply, including for specific sites⁸. The Welsh Government's (WG) '*Development Plans Manual*' (DPM) provides additional guidance on the process of monitoring against the housing trajectory for LDPs adopted prior to its publication. Specifically, it advises that a trajectory should plot completions on a graph against a straight line of the LDP's Annual Average Requirement (AAR).

14. Given the date of adoption of the Caerphilly LDP and the timing of the recent changes to national policy, I have not been provided with a detailed housing trajectory against which housing delivery can be assessed. Nevertheless, the LPA's Officer's Report indicates that, at the time of determining the application, only 4,835 of the required 8,625 dwellings had been completed. It is therefore clear that housing delivery has fallen significantly short of requirements, with a large proportion of allocated housing sites not coming forward to date. There is no longer a requirement to prepare a Joint Housing Land Availability Study (JHLAS). However, it is relevant to note that the 2019 JHLAS only anticipated 924 residential completions between 2020 and 2021. It is therefore clear that the housing requirement identified in the LDP is highly unlikely to be met by the Plan's end date of 2021. Given that the LDP seeks to deliver a significant proportion of its affordable housing need through the planning system⁹, such under delivery of housing has also had a significant adverse impact on the Council's ability to provide sufficient affordable housing to meet identified needs.
15. The Council accepts that there has been a prolonged and persistent shortfall of housing in the County Borough¹⁰ and PPW and the DPM indicate that an early plan review would be an appropriate intervention in such an instance. The Council did commence work on a replacement LDP. However, it resolved to withdraw the Replacement Caerphilly Local Development Plan up to 2031 in October 2016, with a recommendation of pursuing the early preparation of a Strategic Development Plan (SDP) for the Cardiff Capital Region. Nevertheless, it does not appear that significant progress has been made in that respect, with the Council's own evidence stating that it will soon be engaging in the production of that document. The commencement of a further review of the LDP is also not proposed to commence until the end of 2020 or early 2021, with the LPA's evidence indicating that a replacement LDP is unlikely to be adopted until at least Spring 2024. There does not, therefore, appear to be a strategic approach to addressing the Council's housing need in the short to medium term.
16. The development proposed in this case would provide 131 No. dwellings in a broadly sustainable location. Indeed, reflective of the fact that the site was proposed to be included as an allocated site in the withdrawn Replacement LDP to 2031, the site is within walking distance from a number of facilities and services at Cefn Hengoed and would be accessible to multiple public transport services. Such matters clearly weigh in favour of the appeal. Nevertheless, despite being identified as necessary in the LPA's Officer's Report, the appeal submission documents did not include a planning obligation to deliver affordable housing and highway contributions and neither was one submitted before the subsequent deadline for the submission of a full Statement of Case. The appellant has expressed on numerous occasions that an obligation would be forthcoming. However, despite being afforded multiple opportunities in the weeks following the site visit, nothing has been submitted within the timescales prescribed

⁸ Paragraph 4.2.12

⁹ Policy SP15: '*Affordable Housing Target*' refers

¹⁰ Council's Statement of Case, Paragraph 6.7

and I have not seen anything to justify a further delay to proceedings, not least because the most recent correspondence does not include a firm date for the submission of a legal agreement or any detail in respect of its content.

17. In the absence of a planning obligation, the appeal proposal would fail to provide any affordable housing contributions. It would also fail to include a mechanism to deliver necessary highway improvements and contributions towards a travel plan. The delivery of affordable housing is a strategic aim of the adopted LDP and it is also a key ministerial priority which is clearly reflected in national planning policy. This policy position should also be considered within the context that there is a significant demand for affordable housing in this instance. The maintenance of a safe and efficient highway network is also a significant material consideration that is supported by both local and national policy. I have not seen anything to lead me to believe that the matters proposed to be addressed through a planning obligation are not necessary to make the development acceptable in planning terms. As such, I consider the overall weight to be attached to the positive benefits of the scheme to be severely restricted.
18. I have considered the potential for such matters to be addressed through the use of planning conditions. However, I have not been provided with suggested conditions that would address such matters and, in any event, it would appear to be common ground between the parties that a unilateral undertaking or other agreement submitted under Section 106 of the Act is the appropriate mechanism for delivering such obligations. I have no reason to come to an alternative view in this respect. Therefore, despite acknowledging the valuable contribution that the development would make towards the Council's housing land supply, I find that the positive benefits of the appeal scheme fall significantly short of the very exceptional circumstances necessary to clearly outweigh the harm to the Green Wedge. As such, and having considered all matters raised, I conclude that the development would conflict with both Policy SI1.7 of the adopted LDP and the thrust of national policy relating to Green Wedges.

Planning Balance and Overall Conclusions

19. Based on the foregoing analysis, I have found that the principle of development would conflict with the development strategy promoted through the adopted LDP. I have also found that the development would cause harm to the Green Wedge designation and such harm would not be clearly outweighed by very exceptional circumstances. The development would therefore conflict with the thrust of both adopted development plan and national planning policy. For this reason, and having considered all matters raised, I conclude that the appeal should be dismissed.
20. In coming to this conclusion, 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 (WBFG Act). I have taken into account the ways of working set out at section 5 of the WBFG Act and 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, as required by section 8 of the WBFG Act.

Richard E. Jenkins

INSPECTOR