



Appeal Decision

by N Jones BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 03/12/2024

Appeal reference: CAS-03241-H5R0V7

Site address: Land South of Llay Road, Cefn-Y-Bedd, Wrexham, LL12 9UG

- 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 Clint Shaw against the decision of Wrexham County Borough Council.
 - The application Ref LLA P/2022/0681, dated 16 June 2022, was refused by notice dated 6 November 2023.
 - The development proposed is the change of use of land for use as Christmas tree farm and outdoor recreation centre to include reindeer centre, paddle boarding, water related activities and extension of existing lake, creation of bark footpath, erection of building to provide office, machine and equipment store, hay/straw storage and sick bay/maternity bay space for reindeer, and creation of car park, access and site landscaping.
 - A hearing was held 22 October 2024.
 - A site visit was made on 23 October 2024.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. For clarity, I have used the address of the site as given on the Council's decision notice.
3. It is common ground between the parties that temporary use of the site has been undertaken under permitted development rights. An access was in use, albeit not to the configuration shown on the proposed plans, and area of hardstanding was in place in the intended location of the car park, and a variety of caravans and moveable structures were also on the land, at the time of my site visit.
4. A Unilateral Undertaking (UU) was submitted by the appellant in support of the appeal which commits to utilising only the services of a registered waste carrier to dispose of foul waste from the appeal site. Given that other legislation governs this matter, I afford the UU limited weight.

Main Issues

5. The main issues are i) whether the proposed drainage arrangements are appropriate; ii) the effect of the proposal on biodiversity interests with particular regard to the effect of the proposal on the River Dee and Bala Lake Special Area of Conservation ('the SAC'); and iii) the effect of the proposal on pedestrian safety.

Reasons

6. The appeal site extends to some 16.6ha in total and is enclosed on its northern boundary by the B5102 onto which access is taken. This road runs between the Tier 2 Key Settlement of Llay as identified in the Wrexham Local Development Plan (LDP), and Cefn y Bedd, which the appellant points to being a Tier 2 Local Service Centre within neighbouring Flintshire. The appeal site adjoins Park Road on its western boundary whilst a public right of way, joining Park Road, defines its eastern and southern extent.
7. The proposal is to create a permanent outdoor recreation centre which would include visiting and learning about reindeer, as well as providing water-based activities including paddle boarding and swimming utilising an existing lake, which would be extended. Some equipment would be available for hire. Members of a local angling club would also use part of the lake for fishing. Seasonal events would take place such as at Hallowe'en and Christmas where pumpkins and Christmas trees would be grown on the site for sale to visitors. Some pumpkins were on the site during my visit, but Christmas trees, which would take some 10 years to grow, are yet to be planted. The intended building would provide animal welfare facilities and equipment storage and would accommodate staff toilet facilities which would discharge to a package treatment plant (PTP) and an associated drainage field. Portable toilets, already in use for permitted activities, would be made available for customers.
8. The Council confirms it has no specific LDP policy governing the principle of the development. The appellant suggests that LDP Policy CF1, which seeks the protection of existing open space, sport and recreation facilities, and supports the enhancement of the existing network of sites, is applicable. However, the intended building would be required to support the livestock and crop-growing aspects of the proposal, and the location of the recreational activities is dictated by the existing lake, a resource which is not available elsewhere locally. I concur with the Council's view, expressed at the hearing, that the proposal would therefore in principle meet the criteria to secure compliance with LDP Policies SP2 and EM4 which support new development required in connection with a rural enterprise.

Drainage arrangements

9. Planning Policy Wales (Edition 12) (PPW) advises that development proposals in sewered areas must connect foul drainage to the main sewer. Circular 008/2018 ('the Circular') sets out planning requirements in respect of the use of private sewerage in new development, incorporating septic tanks and small sewage treatment plants, where public sewerage connections are unavailable. Whilst there is agreement between the parties that the appeal site is not within a sewered area and I acknowledge that the appellant states that the appeal site is between 900m and 1km from nearest sewers, no cost comparison evidence has been provided that offsite drainage works, including any private rising main laid in the public highway, would not be a practical or viable solution for the amount of wastewater that would be generated by the proposal compared to the PTP and temporary toilet facilities proposed.
10. Nevertheless, in terms of the Circular requirements, from the evidence before me, the intended PTP and its associated drainage field would operate effectively to deal with the

anticipated loading from staff toilets. No showering or changing room facilities would be provided for those visitors partaking in water-based activities, but to avoid PTP performance issues due to irregular peak flows, the appellant confirmed that customer toilet facilities would continue to be provided in the form of portable units. Nonetheless, there is little evidence that appropriate long-term alternatives which could accommodate peaks in flow have been fully investigated. Moreover, customer numbers, apart from during seasonal events, are predicted to be regular and the appellant confirmed that there are no technical constraints preventing or limiting more permanent drainage solutions on the appeal site, which could include an integrated drainage field if separate PTPs were employed.

11. NRW advises that sites with planning consent to hold frequent seasonal events or activities on a long-term basis should be considered permanent development and should use a long-term drainage solution. The appellant acknowledges that the portable units proposed require similar consideration to that of cesspools which act as containers of waste. The Circular advises that cesspools are not a sustainable, long-term solution for sewage provision due to such problems as frequent overflows due to poor maintenance, lack of suitable vehicular access for emptying and through inadequate capacity and irregular emptying. I acknowledge that the units employed during previous seasonal events were not full, but given comparative volumes, they would be likely to require more frequent emptying than conventional cesspools. Disposal is statutorily regulated, and it was agreed at the hearing that the appellant's submitted UU is therefore unnecessary. However, the appeal proposal would not perform well in sustainability terms where frequent associated traffic movements were required to service half-empty units. Conversely, given anticipated volumes, I consider there would be an increased risk of irregular emptying.
12. I conclude that it has not been demonstrated that the proposed drainage arrangements are appropriate, and the proposal would therefore conflict with PPW and Circular 008/2018 advice.

Biodiversity interests

13. The appeal scheme predated the requirement for a Green Infrastructure Statement introduced through changes made to PPW in October 2023, shortly before the Council made its decision. Amongst other matters, PPW includes the planning system response to the Environment (Wales) Act 2016 Section 6 Duty by setting out a framework for planning authorities to maintain and enhance biodiversity in the exercise of their functions (providing a net benefit for biodiversity) reflecting the concept that development should leave biodiversity and the resilience of ecosystems in a significantly better state than before, through securing immediate and long-term, measurable and demonstrable benefit, primarily on or immediately adjacent to the site with a focus in the first instance on avoidance of harm.
14. The appeal site contains Blast Road Pond, a locally designated wildlife site whilst the Llay Bog Site of Special Scientific Interest (SSSI) lies approximately 50 metres away from its eastern boundary. Given the nature of the proposal, there is no disagreement that use of the locally designated site cannot be avoided. The appeal is supported by, amongst other things, an Arboricultural Impact Assessment and Ecological Appraisal which set out the baseline conditions at the site, the anticipated effects of the appeal proposal on trees and biodiversity interests and set out avoidance and mitigation measures. I have taken into account the objections received from interested parties in relation to the potential effects of the appeal scheme on biodiversity and nature conservation interests. However, the Council raises no concerns in relation to the application of the step-wise approach to maintain and enhance biodiversity, build resilient ecological networks and deliver net

benefits for biodiversity by ensuring that any adverse environmental effects are firstly avoided, then minimized, mitigated, and as a last resort compensated for, and from the evidence before me, I have no reason to disagree. Appropriate management of the site, and the scheme's intended biodiversity enhancements, could be set out in an Ecological Mitigation and Enhancement Strategy and could be secured by a planning condition.

15. However, the appeal site is located within the catchment of the River Dee and Bala Lake SAC. In 2021, NRW published the results of its Compliance Assessment of Welsh River Special Areas of Conservation against Phosphorus Targets. The environmental targets these rivers should meet to be in favourable condition are detailed by NRW as conservation objectives in site Core Management Plans (CMPs). An update to phosphorus targets was published in August 2023 'Update to phosphorus targets for water bodies in Special Area of Conservation (SAC) rivers in Wales'. Part of the SAC is currently failing to meet those targets. Proposals which increase nutrient loading, including from discharge of treated wastewater, elevate levels of phosphorus in river flow. High concentrations of phosphorus lead to the process of nutrient enrichment, also known as eutrophication, and can alter the balance of plant species in rivers causing significant ecological damage.
16. PPW advises that all designated sites must be able to continue to protect the biodiversity and features for which they were designated and contribute to the resilience of ecosystems at the appropriate scale. This ability should not be compromised by inappropriate development or other activity. LDP Policy NE6 states that all new development will only be permitted where there is no adverse effect on the integrity of the SAC in particular through the treatment of wastewater. To ensure no adverse effect on the integrity of the SAC, development creating wastewater discharges will be required to demonstrate there is no increase in phosphorus levels in the SAC.
17. Whilst acknowledging current NRW advice in relation to discharges to ground, the appeal proposal has the potential to be a source of additional phosphorus and there is a pathway for impact on the SAC from the scheme. In particular, the temporary units intended for use by customers would require emptying directly at an appropriate wastewater treatment works, identified in this case as the Five Fords wastewater treatment works (WwTW).
18. Albeit that Dŵr Cymru-Welsh Water (DCWW) confirms that Five Fords WwTW is operating in compliance with its existing permit and that there is sufficient headroom within that permit limit to accommodate foul drainage disposal from the intended portable units, the appeal scheme would add to the volume of phosphates entering a failing SAC. NRW's review of permits has included the Five Fords WwTW where a reduction in the concentration of phosphates per litre, from 1mg/l to 0.7mg/l has been agreed, but in the context of an increased discharge volume, effective from 31 March 2030. DCWW confirms that works are intended to be completed to meet the revised permit requirement by the variation date. Whilst in such circumstances, NRW suggest that a Grampian condition could be imposed to require that the development does not contribute foul flows until improvements were made at the receiving WwTW, in this case, given DCWW's anticipated completion date for related works, such a condition would extend beyond the 5 year life of any planning permission. Furthermore, even when works were completed, phosphorus discharges would not be entirely eliminated, and under the revised permit limit, phosphates from development, including the appeal proposal, would still enter the SAC environment.
19. I acknowledge that calculations of the volume capacity of portable toilets in use during previous events have been provided and that whilst they were regularly emptied, they were not full, and that the volume of waste generated was small. However, whilst the development has been operating under permitted development rights, the appeal scheme

would lead to the use of the site on a permanent and regular basis, as well as during events, where anticipated customer numbers could not be regulated, and loadings would be expected to increase.

20. I have taken into account that the appellant states that prior to his purchase of the appeal site, the land was in use for dairy farming which involved grazing approximately 150 head of cattle on a rotational basis, with the grass being allowed to re-establish during intervening periods, during which time it was annually dressed in slurry fertilizer. However, whilst calculations are provided to indicate that the manure produced by reindeer would be less than that produced by cattle, there is no detailed evidence or quantification of the amount of phosphorus which would reach the SAC from those historical activities compared to proposed uses. Neither is there any information that such historic uses would resume if planning permission was withheld. Taking a precautionary approach, I am unable therefore to conclude, beyond reasonable scientific doubt, that the balance of phosphorus loading between the previous and proposed use is tilted in favour of the appeal proposal to secure nutrient neutrality.
21. Accordingly, taking a precautionary approach, the discharge from the project is likely to further harm the SAC site's ecological function and physical environment, compromising achievement of Favourable Conservation Status for many of its qualifying features and preventing or disrupting water quality restoration works. As I am dismissing the appeal it has not been necessary for me to undertake an appropriate assessment under the Regulations.
22. I conclude that it has not been demonstrated that the proposal would not harm biodiversity interests and the proposal would not therefore comply with LDP Policy NE6 or national planning policy advice.

Pedestrian safety

23. The appellant acknowledges that the results of measured speed surveys confirm that over half the traffic using this part of the road network do so at speeds in excess of the designated speed limit. During my site visit I observed numerous infractions, as indicated by the display of approaching vehicle speed on a flashing sign near the site access. Nevertheless, the vehicular access and its visibility splays would be designed to take into account prevailing conditions. Customers would be unlikely to park in the nearby layby when parking was available within the site, and the likelihood of other vehicles being occasionally parked within the layby would not to my mind cause sufficient obstruction to visibility to render the intended vehicular access unsafe. Given the nature and scale of the intended development, the construction stage is likely to be relatively short and construction traffic could be managed by a planning condition. There is no evidence before me that the likely traffic generated by either the construction or operational phases of the intended scheme would lead to unacceptable levels of air pollution. The Council raises no concern regarding vehicular access arrangements and from my own observations and the evidence before me, I have no reason to disagree.
24. In relation to pedestrian traffic, although a footway runs along the northern edge of the B5102, on the opposite side of the road to the appeal site, the Council's officer report concluded that the majority of visitors would be likely to arrive by car and I acknowledge that those carrying equipment to partake in water-based activities are unlikely to walk to the site. However, given its proximity to settlements and the nature of other intended uses, I consider the appeal scheme would be likely to draw some pedestrian visitors.
25. The footway route along the B5102 is not intended in the foreseeable future as part of the development of the Council's Active Travel network, which LDP Policies SP11 and T2 support, to promote increased use of walking and cycling as safe, viable and sustainable

alternatives to the car. Nonetheless, LDP Policies T1 and DM1 encourage the use of the transport hierarchy and support developments that facilitate increased journeys by more sustainable modes of travel first by walking and cycling.

26. The intended pedestrian crossing point would allow pedestrian access between the appeal site and the B5102 footway opposite. I walked this route between Llay and Cefn y Bedd, during my site visit and whilst the footway is narrow in parts, I saw that this is due to encroaching vegetation for much of its length. For the most part it has good forward visibility and there are opportunities for pedestrians to wait on the verge to allow others to pass without having to step out into the carriageway. Vehicular access improvements would secure appropriate visibility for pedestrians exiting the appeal site and I saw that appropriate visibility towards Llay would also be achievable for those crossing from the existing footway into the site. Opening times, which could be controlled by a condition, would ensure the crossing was unlikely to be used after dark.
27. However, due to the road's alignment, I saw, when standing at the front edge of the footway at the intended crossing point, that vehicles, visible at a distance when approaching uphill from around a curve from the direction of Cefn y Bedd to the west, become obscured by the hedge and a dip in the road when reaching another curve near a tree on the northern side of the carriageway, before abruptly coming back into view very near the crossing point. Owing to this alignment, pedestrians would be out of the close eyeline of motorists approaching from the west in this area until moments before reaching the crossing point. Whilst the appellant points out that the Highway Authority has a duty, and requisite powers, to ensure that roadside vegetation does not compromise highway safety, the northern roadside hedge and verge vegetation were well-trimmed at the time of my site visit. Given the rising nature of the agricultural field behind the hedge, I am not persuaded that it could be reliably and regularly maintained at a suitable height and width to ensure a secure agricultural boundary whilst also allowing necessary visibility at the intended pedestrian crossing. I have no details before me of any alternative boundary treatment which could achieve both requirements.
28. I acknowledge that there are public rights of way (PROW) locally which the appellant suggests would also be appropriate alternative pedestrian routes. I saw that the PROW on the edge of the appeal site is wide and generally level but the routes onwards from Park Road to Cefn y Bedd are steep and uneven in parts and so would tend to be less attractive for use by families with young children for example. Part of the PROW to the east of the site, running across farmland towards Llay, was impassable in part at the time of my visit due to deep mud near a cattle feeding station, with such feeding activity likely to coincide in season with the autumn and winter events expected to draw increased visitor numbers.
29. I conclude that it has not been demonstrated that the proposal would not harm pedestrian safety. The proposal is therefore contrary to LDP Policy T1 which supports new development, amongst other things, where they do not have an adverse impact on highway safety.

Planning balance

30. I acknowledge the local support for the proposal and that many residents welcome the venture and have attended seasonal events with their families. I also recognise that PPW identifies that the need to conserve the attributes of the countryside should be balanced against the economic, social and recreational needs of local communities and visitors. I have no reason to disagree with the Council, from my own observations and the evidence before me, that the proposal would have no unacceptable visual effects, and I give appreciable weight to the economic benefits of the scheme.

31. However, I am not satisfied that it has been demonstrated that the proposal's drainage and biodiversity effects would not be harmful, and this weighs against the scheme. Moreover, and whilst I give substantial weight to the opportunities the proposal would provide for outdoor recreation uses and access to the open countryside, benefitting the well-being of residents and visitors, this should not be to the detriment of pedestrian safety which I find overriding.

Other Matters

32. Animal welfare, hygiene requirements for visitors coming into contact with reindeer and the control of Zoonotic diseases are governed by other legislative controls.

Conclusion

33. For the reasons given above and having taken all matters into account, the appeal is dismissed.

34. In reaching my decision, I have taken account of the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's 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.

N Jones

INSPECTOR