



Appeal Decision

by N Jones BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 10-02-2023

Appeal reference: CAS-02004-Y5Z0J8

Site address: Coed y Nant, Cross Street, Pentre, Wrexham, LL14 5AN

- 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 Clwyd Roberts and Mrs Sandra Williams against the decision of Wrexham County Borough Council.
 - The development is the change of use of land from equine to residential to house a static caravan (in retrospect).
 - A site visit was made on 10 January 2023.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The site address in the banner heading above is as given by the appellants whilst the description of development is as used by the Council and adopted by the appellants on the appeal form. I am satisfied they describe the scheme and its location.
3. The development was in place at the time of my visit and consent is sought for a temporary period of 2 years to allow the appellants to seek permanent accommodation and to generate funds to do so, and to reinstate the site.

Main Issues

4. The main issues are:
 - (i) whether the development is inappropriate development within the Green Barrier (GB) and the effect of the development on its openness and the purposes of including land within it;
 - (ii) if the development is inappropriate development, whether the harm by reason of inappropriateness, together with any other harm to the GB, is clearly outweighed by other considerations, so as to amount to the very exceptional circumstances necessary to justify the harm to the GB;
 - (iii) whether the development complies with planning policies relating to the countryside and sustainable development;
 - (iv) the effect of the development on the setting of the Pontcysyllte Aqueduct and Canal World Heritage Site (WHS); and

- (v) the effect of the development on the River Dee and Bala Lake Special Area of Conservation (SAC).

Reasons

Inappropriate development and effect on openness

5. The appeal site is a sloping triangular parcel of land lying in a countryside location within the designated Clwydian Range and Dee Valley Area of Outstanding Natural Beauty (AONB) to the east of, and outside the settlement limit, of Froncysyllte as defined in the Wrexham Unitary Development Plan 1996 – 2011 (UDP). It is elevated above the canal and its tree lined embankment to its north forming part of the WHS, and set below the A5 road to its south, from which it is separated by a lorry storage area.
6. The site is within a GB as designated under UDP Policy EC1. Although less permanent than Green Belt designations, local designations such as the GB have the same purpose, including managing urban form through controlled expansion, safeguarding the countryside from encroachment, protecting the setting of an urban area and assisting urban regeneration. Planning Policy Wales (Edition 11) (PPW) contains a general presumption against inappropriate development which should not be granted planning permission except in very exceptional circumstances where other considerations clearly outweigh the harm to the GB. In line with paragraph 3.78 of PPW, inappropriate development includes other forms of development, such as a use of land, unless they maintain the openness of the GB. UDP Policy EC1 states that permission will only be granted for specified developments within the GB, including uses of land which maintain the openness of the GB and do not conflict with the purposes of including land within it.
7. The caravan and associated development are an appreciable physical presence in the field corner and so would not maintain the openness of the GB. When viewed from the eastern approach on the A5, the development encroaches into the field in a conspicuous position, visually separated from Froncysyllte by the curve of the road, and from the nearby lorry parking area to the west and developments to the east by trees and the open field. Given this, together with the light colour of the caravan and the extent of fencing enclosing the width of the field corner forward of trees on the canal cutting, the development is incongruous in a largely undeveloped countryside setting.
8. Cladding of the caravan with timber would not overcome its prominent position or reduce its size. I saw that some trees have been planted within the site, but no additional landscaping details are provided and given the prominence of the development, any planting would take several years to mature and so would not effectively screen the development for the duration of the temporary consent sought.
9. The development therefore encroaches into the countryside and substantially unacceptably effects the openness of the GB. Whilst the duration of harm to openness would be less over a temporary period of two years, and reversible, than would be the case for a permanently sited development, the openness of the GB would not be maintained, and the harm arising from the loss of openness would be significant and evident throughout the temporary period. I conclude that the development is therefore inappropriate development contrary to UDP Policy EC1. It also fails to comply with UDP Policies GDP1 and PS2 which seek to ensure, amongst other things, that development accords with the character of the site and must not materially detrimentally affect countryside.

Very exceptional circumstances

10. In considering whether very exceptional circumstances exist which would justify the harm to the GB, limitations on the duration of consent or its occupation would not overcome the harm by reason of inappropriateness or loss of openness and so carry little weight. I acknowledge that the site has adequate access and parking arrangements, is free from flooding, and that the development has no appreciable effect on the living conditions of nearby occupiers. However, these are usual expectations of any development, to which I attach neutral weight.
11. The Council acknowledges that the personal circumstances of the appellants are a material consideration in this appeal. I have also had significant regard to their personal circumstances as set out in the written submissions. I have noted the details provided by the appellants in relation to their personal circumstances, including financial situation, their recent difficulties in securing accommodation and the reasons why they particularly value the peaceful environment. The Council does not dispute that dismissal of this appeal may render the appellants homeless which may necessitate them seeking temporary alternative accommodation which may not meet their long term needs or aspirations. I afford these matters significant weight.
12. Nevertheless, I have already concluded that the harm to the GB from the inappropriate development would be considerable. This carries substantial weight. I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very exceptional circumstances necessary to justify the development do not exist.

The countryside and sustainable development

13. The site is in the open countryside for the purposes of planning policy. In such areas the UDP adopts a restrictive approach to most forms of development. In terms of the site's sustainability, although the wider area is served by a range of services, the appellants acknowledge that access to these would be largely reliant on car use, and that the local area has only a limited range of services and facilities. The site therefore does not perform well in sustainable transport terms.
14. As an exception to the UDP's restrictive approach, Policy H5 only allows new housing development, including residential caravans, outside defined settlement limits subject to criteria, including where the requirements of UDP Policy H8 are met. This policy allows affordable housing proposals in exceptional circumstances on small edge of settlement sites which, amongst other things, form a logical extension to the settlement limit.
15. The appellants have explained the circumstances leading to the development due to an inability to access suitable affordable housing locally. The Council accepts the appellants' personal circumstances are material. Nevertheless, the proposal encroaches into a large field on the rural approach to the settlement and is spatially and visually separate from the nearby settlement. The development is consequently not a logical extension to the settlement but results in an ad hoc incursion into the countryside in conflict with the housing policies of the UDP intended to protect the countryside, and UDP Policies GDP1 and PS2.

World Heritage Site

16. Although I saw that the effects are localised, parts of the boundary fencing, and car parking area and some paraphernalia associated with the residential use of the site including garden lighting, are visible through the trees on the embankment. Their

presence increases and broadens the incongruous effects of visible development, including the nearby lorry park, above the embankment, eroding its sense of verdant enclosure. The development therefore unacceptably harms the setting of the WHS and so harms its outstanding value, contrary to UDP Policy GDP1 and UDP Policy EC11 which states that development which would adversely affect the site or setting of sites including those of national significance will not be permitted

Effect on the SAC

17. The appeal site lies within the catchment of the River Dee and Bala Lake SAC, which is part of the higher tier of statutorily designated sites. Whilst UDP Policy EC6 states that developments close to sites of biodiversity interest will only be permitted where it can be clearly demonstrated that the need for the development outweighs the need to safeguard the intrinsic nature conservation value of the site, I am aware that the UDP is time expired. PPW contains more up to date policy advice and states at para. 6.4.11 that planning authorities must have regard to the relative significance of international, national, and local designations in considering the weight to be attached to nature conservation interests. It states that development should be refused where there are adverse impacts on the features for which a site has been designated (para. 6.4.14).
18. Natural Resources Wales (NRW) advises that activities such as the discharge of treated wastewater can elevate levels of phosphorus in rivers, the effects of which can cause significant ecological damage. NRW published the results of its Compliance Assessment of Welsh River Special Areas of Conservation against Phosphorus Targets in 2021 which showed that part of the SAC is currently failing to meet those targets.
19. I acknowledge that additional phosphorus discharges from the development via a public sewerage system would be likely to lead to damaging effects to the SAC. Circular 008/2018 'Planning requirement in respect of the use of private sewerage in new development, incorporating septic tanks and small sewage treatment plants' states however that the first presumption must always be to provide a system of foul drainage discharging into a public sewer so as to avoid public health, amenity or environmental problems which could arise from the inappropriate use of private systems. The appellants acknowledge that the site is within a sewered area but that the sewerage undertaker has not been consulted. I have not been provided with any evidence to substantiate the appellant's claim that a connection to a public sewerage system is not feasible. The development is therefore contrary to national planning policy advice in this respect.
20. Even if the case for non-mains drainage was made out, in accordance with the hierarchical approach in the Circular, where private drainage systems such as septic tanks are demonstrably necessary, the Circular advises that the decision on whether to grant planning permission should be based on a thorough assessment of the likely impact of the foul drainage proposal, including percolation tests. Although many of the criteria for acceptable private sewage treatment systems to avoid effects on the SAC as set out by NRW are met, the appellants acknowledge that percolation testing has not been undertaken in relation to the soakaway.
21. It has not therefore been demonstrated that, irrespective of the means of foul water disposal, the development does not have the potential to be a source of additional phosphorus discharge which could lead to adverse impacts on the features for which the SAC has been designated, contrary to PPW.

Planning balance

22. I have found the development is inappropriate development in the GB that harms its openness and that there are no exceptional circumstances outweighing this harm. In addition, the location of the development does not satisfy UDP Policy H8, or Policies GDP1 or PS2 in relation to its impacts on the countryside and it does not perform well in sustainable transport terms. The development also harms the outstanding value of the designated WHS. It has not been demonstrated that the development does not have the potential to give rise to harmful effects to the internationally designated SAC. The appellants' personal circumstances, and all other matters raised in support of the development, fall considerably short of outweighing this harm.

Other matter

23. I am mindful that dismissal of the appeal would interfere with the appellants' home and private and family life, and the peaceful enjoyment of their property, which are rights contained within Articles 1 & 8 of the Human Rights Act 1988. Any such interference must be balanced against the wider public interest. In this instance, I am satisfied that the legitimate aim of safeguarding the wider public interest can only be adequately met by the refusal of permission. On balance and bearing in mind my duties to safeguard the wider public interest, I consider that the dismissal of the appeal would not place a disproportionate burden on the appellants.

Conclusion

24. For the above reasons and having regard to all other matters raised, I shall dismiss the appeal.

25. In reaching my decision I have taken into account the requirements of sections 3 and 5 of the Well-being of Future Generations (Wales) Act 2015. I consider this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Minister's wellbeing objectives as required by section 8 of the Act.

Nia Jones

Inspector