



Appeal Decision

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 06.03.2023

Appeal reference: CAS-01843-F2G6M0

Site address: Cattle Shelter, Burgess Lane, Penley, Wrexham LL13 0ND

- 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 Andrew Reeves against the decision of Wrexham County Borough Council.
 - The application Ref MAE P/2021/1162, dated 27 October 2021, was refused by notice dated 7 February 2022.
 - The development proposed is to change a yard area from agricultural use to farm waste collection use.
 - A site visit was made on 13 September 2022.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The development has been carried out and the appeal is considered on this basis.

Main Issue

3. This is the effect of the development on highway safety.

Reasons

4. The appeal site is an existing agricultural holding of some 3ha with an existing farm building on site, yard area and access. The development is to use part of the yard area to the south of the building to store bagged farm waste. Local farms deliver their plastic waste to the appeal site, and this is stored in bags on the yard until it is collected by the plastic waste contractor. In this case the contractor for the recycling materials is Farm XS Ltd. Farm XS Ltd has provided supporting information as part of the appeal.
5. Farm XS Ltd was set up to deal with demand arising from changes to waste disposal regulations prohibiting farmers from burning waste plastic on farms and the need to dispose of plastic in a traceable and sustainable way. Farm XS Ltd operate a membership scheme for farmers taking plastic off around 2,000 farms. As part of the scheme there are collection points where plastic is received, stored, and collected. The plastic is collected by a lorry mounted industrial waste baler which is ultimately

transferred to the recycling plant. The appeal site currently caters for 24 farm members and the intention would be to increase this to 50 members. Each member arranges for the delivery of surplus plastic to the appeal site. It is indicated that the plastic is contained in dumpy bags or is bundled-up. When there are 200 bags on the site the waste baler is brought to the site.

6. Farm XS Ltd indicates that at the anticipated level of 50 members this would necessitate two annual visits by a lorry. It is asserted that most members of the scheme would deliver plastic once annually either by tractor and trailer or four-by-four vehicle. On this basis there would be one or two vehicle movements per week.
7. The site is some 1km from the junction of the A539. The road is single vehicle width with some passing places, although these predominantly form verges to the roadside and there are accesses to properties and tracks that may also serve as passing places. Traffic speeds are likely to be low when travelling along Burgess Lane and the main source of objection from the Council relates to the increase flow of traffic because of this development. Traffic movements are likely to come from the A539 junction towards the site. However, there are other routes heading south from the A525 via Hollybush Lane.
8. Both approaches are narrow but there are some opportunities to pass. Forward visibility is somewhat restricted due to the bends in the road when traveling north along Burgess Lane from the A539. In the first 315m there are two passing places and a property access. Should vehicles be meeting one another at this point one vehicle would need to reverse a considerable distance to the hard surfaced lay-by near the junction with the A539 or reverse to the grass verge informal lay-by south of Hideaway or the splayed entrance of this property. A section of road north of the entrance of Blackwood House there is a small lay-by, the next lay-by is some 200m away travelling north around several bends. Forward visibility is restricted between these informal lay-bys and reversing this distance between them would not in my view be regarded as a safe manoeuvre.
9. The appellant indicates that traffic movements would be a maximum of two per week with two lorry collections a year. The Highway Authority in its response indicates that daily vehicle movements would be relatively low, but the proposed increase may have the potential to result in a significant increase in vehicle movements. The Highway Authority would seek a scheme of passing places in the scenario that the appellant would increase its membership to 50.
10. However, the application site is relatively small and if the business develops to 50 members, then it is likely that the frequency of visits from the lorry baler would also increase because site capacity would be reached much sooner. There is a lack of information presented with this appeal to determine site capacity of the storage facility and the average amount of material brought by each of the 50 members of the scheme. Traffic movements should be calculated based on the frequency the site needs to be cleared of material and the extent of movement that a full capacity membership scheme would have in terms of traffic generation. If permission is granted based on the current membership, there are limited controls that would be applied to the scale of the enterprise that could be enforced against. These could only realistically relate to the maximum capacity of storage on the site or a strict adherence to the area of the application site, and a register of the scheme's membership so this is not exceeded.
11. In this case, the maximum anticipated traffic flow movement of the enterprise should have been quantified and explained set against the backdrop of the existing flow of traffic already using Burgess Lane. The information presented does not provide this information to assess the residual impact of the development on highway safety. I am not convinced that as presented the development complies with Wrexham's Unitary Development Plan Policy GDP1(d).

12. In relation to other highway concerns I am not persuaded that the visibility objection on the junction of the A539 is within the ambit of the appellant's control any more so than existing users of this lane. I do not regard this matter a determining issue against the development. The Highway Authority indicates that visibility at the site entrance appears to be a requirement of previous approvals on the site.
13. In this case I consider that there is a lack of information presented with the application/appeal to determine whether the development would have an adverse impact on highway safety having regard to the development plan policy. I do not consider that a temporary permission should be granted either, based on the information provided as indicated in the Council's officer report dated 7 February 2022.

Other matters

14. The appeal site is within the catchment of the River Dee and Bala Lake Special Area of Conservation (SAC). Following the publication by Natural Resources Wales (NRW) of the results of the compliance assessment of Welsh Riverine SACs against phosphorus targets the parties were asked to provide information to carry out a Habitats Regulations Assessment (HRA) screening process to determine whether the proposed development is likely to have a significant effect on the site's qualifying features under the terms of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
15. The Council has provided a screening report on 19 January 2022 in accordance with NRW's interim advice for planning applications within the SAC catchment. The Council's conclusion is that the development was unlikely to increase phosphate inputs as the development falls within the criterion in the interim advice. The Council's screening report follows NRW's response on 18 January 2022 that it was satisfied that the development is not likely to have a significant effect on the River Dee and Bala Lake SAC.
16. The Inspector, as competent authority with respect to the Regulations, will need to decide whether 'likely significant effects' alone or in-combination with other plans or projects, can be ruled out based on the information provided by the parties. The competent authority may agree to the project only after ascertaining that it will not adversely affect the integrity of the European site.
17. However, in this instance I do not agree that the development should go ahead because the development is unacceptable on another ground.

Planning Balance and Conclusions

18. I have found that the development fails to accord with the development plan policy on highway issues due to the paucity of information submitted to sufficiently address the matter of highway safety. No other material consideration is sufficient or compelling to outweigh the conflict with the development plan.
19. As this ground is sufficient on its own to dismiss this appeal, I have not undertaken a screening of the project under the Habitat Regulations. The Habitat Regulations apply to plans or projects where the competent authority may agree to it after ascertaining that it will not adversely affect the integrity of the European site. In this instance I do not agree to the project, based on the available evidence, that it should be allowed, due to the concern on highway safety.
20. I find that the planning balance is against allowing this appeal.
21. 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 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.

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22. I therefore dismiss this appeal.

Iwan Lloyd

INSPECTOR