



Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 15/03/22

Ymweliad â safle a wnaed ar 16/03/22

**gan C MacFarlane BSc(Hons) MSc
MRTPI**

**Arolygydd a benodir gan Weinidogion
Cymru**

Dyddiad: 13.04.22

Appeal Decision

Hearing held on 15/03/22

Site visit made on 16/03/22

**by C MacFarlane BSc(Hons) MSc
MRTPI**

**an Inspector appointed by the Welsh
Ministers**

Date: 13.04.22

Appeal Ref: APP/H6955/A/21/3276889

Site address: Halen-y-Ddaear, Higher Lanes, Higher Wych, Whitchurch SY14 7J

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 Ifor Edwards (IC & AL Edwards) against the decision of Wrexham County Borough Council.
 - The development proposed is the erection of a four bed dwelling for the agricultural occupancy of Mr & Mrs Edwards, with a detached double garage, workshop and office for farm management.
-

Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made during the hearing by Mr Ifor Edwards against Wrexham County Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The description of development is taken from the application and appeal forms. Although the Council has used a different description in its decision notice, this omits certain aspects and there is no confirmation that a revised description was agreed by the appellant. I have therefore determined the appeal based on the description above.
4. The application was submitted in outline, with all matters reserved for determination at a later stage, and I have dealt with the appeal on this basis. Plans were submitted with the application which includes the siting, layout and appearance of the dwelling, which I have considered as indicative.

5. A hearing was held in respect of the main issue relating to the provision of a rural enterprise dwelling, with all other issues and matters considered on the basis of the written representations provided.

Main Issues

6. The main issues are:
 - i) Whether the proposal satisfies local and national planning policy requirements in relation to the provision of a rural enterprise dwelling;
 - ii) The effect of the proposal on the character and appearance of the surrounding area; and
 - iii) The effect of the proposal on the setting of a listed building.

Reasons

Rural enterprise dwelling

7. The appeal site is part of a field currently used for grazing and located in open countryside, as defined by the Wrexham Unitary Development Plan (UDP). The site adjoins the highway and forms part of a larger area of land farmed by the appellant. The farm business is based at the main complex, Oaks Farm, which is approximately 3 miles from the site and accommodates the farm's dairy herd and operation.
8. UDP Policy H5 restricts new dwellings in open countryside, with a limited number of exceptions, including where an essential need to house a full time agricultural key worker can be established. In determining the application, the Council has assessed the proposal against Planning Policy Wales 11 (PPW), Technical Advice Note 6 'Planning for Sustainable Rural Communities' (TAN 6) and its supporting Practice Guidance 'Rural Enterprise Dwellings', all of which have been published since the adoption of the UDP and provide greater detail in respect of the justification for such proposals when compared to Policy H5.
9. TAN 6 paragraph 4.3.1 identifies several categories which rural enterprise dwellings may be considered against, including where it would facilitate the handover of the management of the farm business to a younger person. I also acknowledge the appellant's comments made in respect of farm succession and the need to encourage new entrants to the sector.
10. It was stated at the hearing that the enterprise is presently a partnership between the appellant and a family member employed in the business, with the appellant continuing to play an active operational and managerial role. However, this falls short of the requirement of TAN 6 to demonstrate that secure and legally binding arrangements are in place to transfer the management of the farm, with the successor demonstrating majority control over the business and being the decision maker. Nor has it been substantively argued that any such transfer of management is conditional on the grant of planning permission for the proposal. I therefore consider that the five tests set out in TAN 6 for the assessment of rural enterprise dwelling proposals must be satisfied.
11. In respect of the functional test, the main requirements relate to livestock care, calving, lambing and security. It was confirmed at the hearing that lambing occurs during a single block for a few months of the year. Given its seasonal nature and that temporary accommodation may be provided, I do not consider this justifies a permanent dwelling. Reference has been made to previous incidents of theft, trespass and livestock escaping around the site, both in the appellant's submissions and at the hearing. However, there is little to indicate that these occurrences, although understandably frustrating for the

appellant, are of such a scale in terms of frequency, loss of value or interruption to the business's activities as to represent a threat to the viability and existence of the enterprise and that a permanent dwelling is the minimum means necessary to prevent such incidents.

12. It was stated at the hearing that calving currently occurs on the land around the site throughout the year and, along with the demands of livestock care, is facilitated by the appellant and/or employees travelling to the area from Oaks Farm. Clarification was provided that the frequency of such trips varies, from at least once per day to several times per day when circumstances require.
13. Whilst I acknowledge that livestock numbers will fluctuate over time, the information submitted on the number and nature of livestock and calving requirements present on the land around the site appears to vary considerably, with differences between the data provided in the Ba Construction Services 'Planning Support Statement & Rural Enterprise Dwelling Appraisal', the P&L AgriConsulting 'Justification & Support Statement' and that provided at the hearing. Section 5 of the P&L AgriConsulting statement also provides only general information in respect of calving, indicating up to 70 calving cows and beef cows to calve when combined. In addition, it was confirmed that temporary movement restrictions arising from Bovine Tuberculosis (TB) have increased livestock numbers by a small amount, although this was not quantified. As a result, it is difficult to ascertain with any confidence the likely scale and nature of the livestock care and calving requirements associated with the land.
14. I note the appellant's comments regarding the need for preventative care and monitoring of livestock, and in responding to certain ailments and scenarios. However, it appears to me that at least some of the requirements referred to are routine matters that may be attended to during the normal working day. Furthermore, whilst examples have been provided of instances where constant supervision and ready treatment would be required, these are general in nature and lack sufficient information to deduce the likelihood or frequency of such occurrences.
15. Whilst the proposal would undoubtedly be more convenient for the appellant by eliminating travelling time from Oaks Farm to the site, there is a lack of convincing argument presented to explain why the current arrangements are no longer feasible and a permanent presence on-site is now required. Although statements have been made regarding development of the business, little specific information to substantiate this has been provided. I acknowledge the practical difficulties due to TB movement limitations, however, such restrictions are temporary and therefore do not justify a permanent dwelling on the site.
16. The majority of the land farmed by the appellant around the site is rented from a number of other landowners and it was clarified at the hearing that these agreements are renewed annually, although a longer notice period may be given in the event an agreement ceases. Notwithstanding the substantial time periods which some of the agreements have existed, and assertions of good relationships with the landowners, given the area of land that is rented and the relatively short length of time for which it can be secured, there is a realistic possibility that the land farmed by the appellant could significantly decrease, with consequential changes to the use of the remaining land and livestock numbers on and around the site. Although the appellant states that, in such a scenario, the owned land would still be sufficient to accommodate enough livestock to justify the proposal, this appears to be based on an assumption relating to average herd size and profitability in Wales, rather than specific to any functional need.

17. Drawing together all of the above, I consider that insufficient evidence has been provided to demonstrate that a permanent presence on the site is essential to ensure the on-going functioning of the enterprise, and the functional test has therefore not been met.
18. With regard to the time test, the figures provided in relation to the number of full-time employees required appears to vary significantly between the Ba Construction Services and P&L AgriConsulting documents. Additionally, these are presented based on differing geographical areas and activities, therefore direct comparisons cannot be easily made. In any event, the more recent figures in the P&L AgriConsulting document indicate a need for several full-time workers on the basis of livestock requirements alone. However, this relates to the whole farm enterprise, with the majority of the labour requirement being associated with the dairy herd at Oaks Farm.
19. Whilst there may be a labour requirement sufficient to meet the criteria in TAN 6 after discounting the demands arising from livestock at Oaks Farm, the information provided has not been presented in such a way as to be readily identifiable. Given my concerns regarding the lack of information in respect of the functional test and potential uncertainties in relation to land tenure, and the implications these matters have on any labour requirement, I am therefore unable to conclude that the time test has been met.
20. In relation to the financial test, TAN 6 states that evidence of actual or potential economic performance will be required, in order to demonstrate that the business is financially sound and has good prospects of remaining economically sustainable for a reasonable period of time. Paragraph 4.10.2 further states that the financial test is also necessary to assess the size of dwelling which the enterprise can afford to build and maintain, and that it is the requirements of the enterprise, rather than the occupier, that are relevant in determining the size of the proposal.
21. Whilst the farm has been established for some time, and comments in support of the business's viability were made at the hearing, no financial evidence relating to its economic performance has been provided as part of the appeal submission. Therefore, it is not possible for me to conclude that it is currently, and will continue to be, financially sound. Some information has been provided on the potential cost of the purchase and erection of a frame kit for the dwelling, however other construction costs, and ongoing costs, have not been identified. General assurances were also given regarding the overall anticipated cost and funds available to the appellant, however insufficient detailed evidence has been put before me to support such assurances.
22. Furthermore, whilst I acknowledge the family circumstances of the appellant and desire to provide a separate home for a family member, there is little to indicate that it is the requirements of the enterprise that have resulted in the proposal as submitted, rather than matters personal to the appellant. I recognise it may be possible that any future occupier would also require a 4-bedroom property, however, such an assumption would also appear to be based on personal circumstances rather than the needs of the enterprise. Therefore, due to the lack of financial information and justification provided in respect of both the business and the proposal, I do not consider that the financial test has been met.
23. Turning to the other dwelling test, there are no dwellings or buildings currently on the site and it was agreed by both parties at the hearing that the adjoining stable block is not considered suitable for conversion to residential use given its size and construction. The appellant also confirmed at the hearing that all buildings at Oaks Farm are currently utilised by the business and are therefore not available for conversion. In any event, the appellant considers the functional need requires a dwelling at the site, which would not be met by a property that is located away from the site.

24. Given my finding that the functional test has not been met in this instance, I consider that any labour requirements relating to the land farmed around the site could potentially be met by a dwelling that is located away from the site, albeit at a reasonable distance.
25. Paragraph 6.2 of the Practice Guidance states that, amongst other things, applicants will need to demonstrate 'why existing housing in the locality is unsuitable or unavailable to meet the functional need of the enterprise; for example, through the remoteness of the enterprise base, the high cost of open market housing, or the general lack of availability of appropriate house types'. Whilst the appellant has provided information showing only a small number of properties available for purchase or rent within a 3 mile radius of the site, similar information provided in the P&L ArgiConsulting document shows a much greater number of available properties within a 5 mile radius, which captures larger nearby settlements. I note the comments regarding the high cost of housing in the area, however these are general in nature and there is little information provided in relation to prices, sizes and affordability to the appellant of the properties potentially available. Given the lack of information, I therefore consider that this test has not been met.
26. Lastly, the other planning requirements test requires rural enterprise dwellings to 'satisfy the usual planning requirements in terms of design, sustainability and access' (TAN 6, paragraph 4.12.1). Due to the outline nature of the application, specific details of the proposal are not before me as part of this appeal. However, TAN 6 is clear that, with regard to siting, proposals 'should not be isolated from the farmstead or in locations that could encourage farm fragmentation'. Whilst not located a substantial distance from Oaks Farm, the site is clearly divorced from the main complex and, given this existing separation in terms of distance and the clear division of business activities, I consider the appeal site would be isolated from the main farmstead and could encourage farm fragmentation.
27. In addition, the Council has raised concerns regarding the indicative size of the proposed dwelling, with regard to visual impact and affordability for future occupiers. I return to matters of visual impact as part of my considerations on the second main issue. With regard to future affordability, the scale of the property is a matter reserved for approval at a later date. Therefore, whilst the proposal is for a 4-bedroom dwelling, there is nothing before me to indicate that this would preclude the property from being capable of meeting the Council's normal requirements for affordable housing.
28. In conclusion, I find that the proposal does not meet the tests set out and therefore insufficient justification has been provided to satisfy local and national planning policy requirements in relation to the provision of a rural enterprise dwelling, specifically UDP Policy H5 and TAN 6.

Character and appearance

29. The surrounding area is intrinsically rural in character, being mainly agricultural land, with narrow highways, hedgerows, scattered mature trees and a small number of individual properties. A small single-storey stable building is located on land immediately adjoining the site. The undulating topography, lack of built development and limited tree cover around the site provide an attractive open vista, which is reflected in its inclusion within a Special Landscape Area (SLA), as designated by the UDP. With regard to the LANDMAP landscape classification system, the Council have identified the site as sitting within area 13b 'English Maelor' and adjoining area 12b 'Wych Valley'.
30. Policy EC5 gives priority to the conservation and enhancement of SLAs. Whilst the policy wording refers to 'development, other than for agriculture, small-scale farm-based and other rural enterprises...' being strictly controlled, it does not follow that any development

falling within those categories would therefore be acceptable. This is supported by the explanatory text in UDP paragraph 5.6, which recognises that development is often inappropriate in such sensitive locations.

31. The proposal would result in a fundamental change to the character of the site through the introduction of built development where none currently exists, along with parking, gardens and domestic paraphernalia that would be associated with residential use. Whilst the site is located close to the existing stable block, this is a modest, low-profile structure of muted colours and timber finish, which, with its simple utilitarian form, has a recessive appearance in the landscape. In contrast, the proposal would inevitably be significantly larger in scale, with a more formalised and domestic appearance and would therefore appear as an isolated development. References have been made to the integration of the proposal with future development around the site. However, as no evidence of extant planning permission for other buildings has been provided, I am unable to afford such matters any consideration in determining this appeal.
32. I note there are locations distant from the site which may afford views of the proposal, however the main view of the proposal would be from the highway. Whilst the topography provides some screening, this is restricted to points further away from the site along the highway. Although some screening would be afforded by existing boundary hedges, this is not continuous, nor would it obscure views during the winter months. The openness of the area, with the land level rising gradually away from the highway, also gives a prominence to the site. Consequently, the proposal would be highly visible when close to and approaching the site in either direction along the highway.
33. The resultant effect would be a visually intrusive form of development, with erosion of the openness that is a distinctive part of the site and its surroundings, thereby causing significant harm to the character and appearance of the area. I acknowledge the appellant's intention to provide a high quality dwelling that is in keeping with the surrounding properties, however this would not address the fundamental harm arising from the siting of the proposal in a prominent and sensitive location.
34. I therefore conclude that the proposal would not comply with UDP Policies PS2, GPD1 and EC5, which state that development must not materially detrimentally affect countryside and landscape character, and require all development to accord with the character of the site and make a positive contribution to the appearance of the nearby locality.

Listed Building setting

35. 'Pen-y-Bryn' is a Grade II* listed building, which has particular architectural interest as an especially fine late 17th Century-early 18th Century Renaissance house. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
36. Historically part of the Iscoyd Park Estate, Pen-y-Bryn occupies an elevated position, being situated on the crest of a hill to the rear of the site, and breaks the skyline when viewed from the appeal site and adjoining highway. When viewed in the context of the surrounding open area, with little other built development visible, this results in the property having a prominent and commanding presence. The introduction of a modern dwelling would erode the openness of this setting, which contributes to the building's prominence and allows its architectural features to be read, and would detract from the historical value of Pen-y-Bryn as the principal structure in the area. As such, the proposal

would significantly and detrimentally alter the way in which the listed building is experienced.

37. Although the appellant has referred to other developments in the area being allowed in the presence of listed buildings, I am not aware of the circumstances which led to these being considered acceptable. Furthermore, given their locations away from the site and differing relationships to listed buildings, I do not consider these examples allow direct comparisons to be made with the appeal proposal. In any event, each proposal must be considered on its own merits.
38. In conclusion, the proposed development would cause significant harm to the setting of a listed building and would not comply with UDP Policy EC9, which requires that development respect the setting and character of listed buildings.

Other Matters

39. I note the appellant's comments that the proposal would result in reduced vehicle movements on the roads between the site and Oaks Farm. However, given the relatively low number of daily trips to the site, any such benefit would be small in scale and localised in nature. I therefore do not consider that this would be sufficient to outweigh the permanent harm caused by the proposal.
40. Whilst the site may be of sufficient size to provide acceptable access, parking and amenity space, and have sufficient separation from the nearest dwellings to ensure acceptable living conditions, an absence of harm in these matters is a normal expectation of new development. Such considerations are therefore a neutral factor in determining the appeal and do not outweigh the harm identified.
41. Comments have been made by the appellant regarding alleged breaches of planning permission at other properties in the area. However, such matters are outside of my jurisdiction in determining this appeal and have not influenced my decision.
42. In reaching my decision, 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.

Conclusion

43. For the reasons given above, the appeal is dismissed.

Claire MacFarlane

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ms Grace Edwards Agent

FOR THE LOCAL PLANNING AUTHORITY:

Mr Simon Greenland Planning Officer

INTERESTED PARTIES:

Ms Charlotte Murray Local resident

Mr Nial Casselden Fisher German LLP