
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 08/11/17

gan A L McCooey BA MSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 14/12/17

Appeal Decision

Site visit made on 08/11/17

by A L McCooey BA MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 14/12/17

Appeal A - Ref: APP/H6955/C/17/3183278

Site address: Land at Wood View, Fenns Wood, Fenns Bank, Whitchurch, SY13 3PD

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Paul Martin against an enforcement notice (EN) issued by Wrexham County Borough Council.
 - The enforcement notice, numbered ENF/2016/0432-2, was issued on 26 July 2017.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of wooden stables, agricultural buildings and a plastic polytunnel.
 - The requirements of the notice are permanently remove the wooden stables, agricultural buildings and polytunnel from the land edged red.
 - The period for compliance with the requirements is 3 months from when the EN takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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Appeal B - Ref: APP/H6955/C/17/3183348

Site address: Land at Wood View, Fenns Wood, Fenns Bank, Whitchurch, SY13 3PD

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Paul Martin against an enforcement notice (EN) issued by Wrexham County Borough Council.
 - The enforcement notice, numbered ENF/2016/0432-1, was issued on 26 July 2017.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from agricultural use to a mixed use of agricultural and residential use by the stationing of a static caravan for residential purposes.
 - The requirements of the notice are to permanently remove the static caravan from the land edged red.
 - The period for compliance with the requirements is 6 months from when the EN takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. Appeals A and B are dismissed and the enforcement notices are upheld, and planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

2. The address of the land and appellant is variously stated as Wood View, Fenns Bank, Wrexham and Wood View, Fenns Bank Road, Whitchurch or variations of the two. The postcode is consistently stated as SY13 3PD. I have used the address above as specified on the notices.
3. There are two separate appeals in this case. One for operational development involving buildings and one for a change of use involving a caravan used as a dwelling. I shall consider the appeals on their own merits, whilst acknowledging that both appeals relate to a new agricultural enterprise on the site.

The Appeals on Ground (a) and the Deemed Planning Applications

Main Issues

4. The main issues are:
 - whether the caravan satisfies the tests for rural enterprise accommodation as set out in Technical Advice Note 6: Planning for Sustainable Rural Communities (TAN 6);
 - the effect of the buildings and caravan on the character and appearance of this area of countryside; and
 - whether the caravan, buildings and associated facilities would harm the integrity of a Special Area of Conservation (SAC), Ramsar site and Site of Special Scientific Interest (SSSI).

Reasons

5. The site is located in the countryside near Whitchurch on the border between Wales and England. It is accessed from a lane with a group of dwellings a short distance away to the south and a bungalow opposite the appeal site. The site consists of three relatively flat fields with mature trees and hedging. There are wooded areas and ponds around the site and signage associated with the SAC is present on lanes to the north. The buildings and static caravan are located on the southern field close to the junction of the lane and an access to buildings to the east. A conventional wide agricultural gate in the south-west corner provides access to the site. There is around 20m of close-boarded fence adjacent to the access. At the time of my visit, the caravan was located close to the southern boundary with a stable on sled runners to the east. To the west near the lane there was a building in 3 sections. The use of each section was: domestic storage, housing 3 calves and fodder storage. To the north of this building was a polytunnel with around 11 animals in pens inside. Various items of machinery were present in this area, including 2 tractors, a baler, agricultural machinery, trailers and a horsebox. There were several other smaller structures present also. Around 8 sheep were grazing in the fields.
6. The appellant has provided details of the size of the buildings as follows: the original building on the land was 4m by 4.5m with two lean-to additions measuring 3.5m by 4.2m each; the polytunnel measuring 6m by 12m and a stable (4.5m by 3.6m).

Appeal B - The Static Caravan in Use as a Dwelling

7. As the site lies outside any settlement there is no dispute that it is within the countryside for the purposes of planning policy. Both national and local¹ planning policies seek to tightly control development in the countryside. The provision of a dwelling to meet the proven need of a rural enterprise is an exception to the generally restrictive effect of policy. All applications for new rural enterprise dwellings should be carefully examined to ensure that there is a genuine need. It will be important to establish whether the rural enterprise is operating as a business and will continue to operate for a reasonable length of time. Technical Advice Note 6 Planning for Sustainable Rural Communities (TAN6) and the accompanying Practice Guidance provides detailed policy advice on the circumstances when a new dwelling would meet the tests for an exception.
8. The appeal was accompanied by an Agricultural Justification Report for the dwelling/static caravan. It is stated that the appellant farms on around 25 ha of land (6 ha is owned with around 19 ha taken on short and long-term tenancies). The land is all in grass with around half used for grazing and half for silage or hay production. Paragraph 1.6 states that he currently has 70 sheep and 62 cattle. The farming operation at the site started after the appellant left his County Council holding and has grown by buying and renting land when it becomes available.
9. TAN6 at 4.6.1 sets out criteria for a new dwelling on a new enterprise. There has been some investment in land, new buildings and machinery. No actual figures have been presented and so the evidence of a firm intention and ability to develop the rural enterprise is not clear. No evidence of why this location was chosen rather than another with an existing available dwelling has been supplied. The report confirms that the caravan and buildings are located in a central position relative to the farm holdings. However, the Local Planning Authority states that the landholding is widespread, comprising widely dispersed parcels of land. This was not disputed by the appellant. Turning now to the evidence required under TAN6 for a new dwelling on a new enterprise. There are four tests that must be met in order for a rural enterprise dwelling to be approved.

The Tests in TAN 6

10. The first is the functional test, which is described in TAN 6 at paragraph 4.8.1. It must be essential for a worker to be readily available at most times to deal with unexpected situations which might arise. For example the need to be on hand day or night to deal with an emergency that might threaten the continued viability of the enterprise without immediate attention. The evidence related mainly to the need to be on site during the lambing season. This was supported by a letter from the appellant's vet.
11. The caravan is sited adjacent to the recently constructed buildings. The appellant is therefore on hand to deal with emergencies and provide security. The critical period is stated to be during lambing, which occurs for a relatively short period of the year and other arrangements could be put in place at this time. There was no evidence of any increased security risk. Other measures such as CCTV could address this issue it seems to me. The evidence does not support the appellant's claim that the functional need test is met.

¹ Policy H5 – Wrexham UDP & Paragraphs 9.3.6 & 9.3.10 of Planning Policy Wales, Edition 9

12. The next test is the Time Test. The Report calculates a labour requirement of 0.66 on the basis of the current enterprise. This figure has not been meaningfully challenged by the Local Planning Authority. However, this is insufficient to meet the time test for a new dwelling. The Report states that most aspects of the enterprise are expected to expand significantly in the next year or so. There is inconsistency in the figures provided for the numbers of animals for 2017 on page 2 of the report and in the Table on page 7. The basis for this expansion appears to be unclear and not supported by convincing evidence. I therefore conclude that this test is not met at the moment.
13. TAN6 also requires consideration of the Financial Test. The business should be financially sound and should have good prospects of remaining economically sustainable for at least 5 years. There must be clear evidence of a firm intention and ability to develop the rural enterprise. The TAN6 Practice Guidance sets out what is expected from applicants for new farm dwellings. Business plans are required for new enterprises and actual financial records for established enterprises. In this case, no financial information has been supplied. No business plan for this new enterprise has been supplied. The appellant states that he has been farming for some time and has built up a reputable business. As the business is operating it would be expected that actual accounts or other financial information would have been supplied. He states that he has heavily invested in the business in recent times. No detailed evidence to support this statement has been supplied. The appellant has not provided any information to demonstrate that the requirement for the enterprise to be financially sound and sustainable has been met.
14. Finally, there is the other dwellings test. The Council's claim that no evidence has been supplied is incorrect. The Report submitted with the appeal considers other dwellings for sale in the area and concludes that they are beyond the means of the appellant or a farming budget. This consists of a search on Rightmove, with the details of 3 local properties for sale being supplied. In the absence of financial information, the appellant's claim that the local properties for sale are beyond his budget are difficult to assess.
15. No evidence was available as to why this site was chosen and what other alternatives have been investigated. This is important in this case given the nature conservation interest on the site. The appellant is stated to be actively looking for more land to acquire. No information on whether he had investigated any available land with buildings or even a dwelling has been provided. In these circumstances, I conclude that the other dwellings test has not been met.
16. My conclusion on Appeal B in relation to the tests in TAN6 is that the evidence does not demonstrate that the agricultural enterprise or appellant's circumstances meet any of the four tests. Although not part of the appellant's case, I have considered whether a temporary planning permission for 3 years would be appropriate, as advocated in TAN6 (at paragraph 4.6.2). I do not consider that it would be appropriate in this case because of the lack of evidence regarding viability and sustainability; and the effect of the development on the designated sites (which I address below). I conclude therefore that the appeal must fail on the grounds that it does not meet the tests in TAN6 for an agricultural dwelling.
17. No evidence or case in relation to an infringement of the appellant's human rights under the European Convention on Human Rights (or Human Rights Act) was made. Notwithstanding, I am conscious that the dismissal of the appeals will interfere with the appellant's home life. However, this must be weighed against the wider public interest. The harm caused by the development as set out above can only be addressed by the refusal of planning permission under the ground (a) appeal. Taking

all these matters into consideration, I am satisfied that the dismissal of the appeal would be proportionate and necessary. The protection of the public interest cannot be achieved by means that are less interfering of his rights.

Both Appeals – the Effect on the Integrity of the SAC, Ramsar Site and SSSI

18. The site is located in Fenn's Whixall, Bettisfield, Wem and Cadney Mosses SAC and SSSI. It is also in Midland Meres and Mosses Phase 2 (Ramsar site). As such it is within an area of international and national importance for nature conservation. Natural Resources Wales (NRW) states that the development has had or is likely to have a significant detrimental effect on this part of the SSSI/SAC and Ramsar site.
19. The reasons for this likely significant detrimental effect are set out by NRW as follows. Firstly, the increase in grazing that has already occurred on this area over the last few years is likely to have resulted in damage to the peat body (by poaching especially in winter). Degradation of the peat by increasing nutrient levels through direct application and run-in and on mineral areas of the land could cause pollution of adjoining peaty areas, groundwater and also from runoff of animal urine/faecal matter. This could not only affect the land subject to the appeal, but also to peat in the rest of the SAC which receives drainage from this area. In order to bring this part of the SSSI/SAC/Ramsar into favourable conservation status a higher year round water level is required and this is not compatible with the increase in intensity of farming that has occurred within the last year. NRW were also concerned that the site now contains a number of buildings and structures as well as an occupied residential caravan. This development is not considered suitable or sustainable in the designated areas.
20. The appellant provided evidence that the development subject of these appeals would not affect these designations in the form of a letter of consent for some of the buildings from NRW. NRW has advised that this consent was temporary and given to allow the appellant to provide shelter and live on the site during lambing given his short-term difficulties with his farming business. The consent was for 6 months expiring in June 2017, when all buildings and structures should have been removed. The only live consent is for annual grazing on the land by a limited number of cattle and sheep from May to September until the year 2019.
21. The appeal site is on the edge of the designated area. Nevertheless the evidence from the relevant statutory consultee/body is that the appeal site has or would be affected by the development and the remainder of the SAC/ Ramsar site/SSSI could also be affected by virtue of run-off or pollution from the appeal site. This would be contrary to National Policy for the protection of international designated sites. There are no reasons of over-riding public interest associated with the development that would justify locating the development in such a sensitive area.

Appeal A – the Agricultural Buildings and Stables

22. Policy EC3 of the Unitary Development Plan requires new buildings to form part of an existing farm complex. Isolated buildings will only be permitted where there is an essential agricultural need and there is no reasonable alternative location. Account must also be taken of the impact on the environment and surrounding landscape. There was only one small building on the land when the appellant moved there. No evidence of any buildings on the rented land has been provided.

23. The appellant makes the point that the stables are not fixed to the ground and therefore do not require planning permission as a building. I do not agree because the stables have a degree of permanence and are not intended to be moved. They are quite substantial and have the appearance of a building and it is justifiable for them to be considered as such.
24. I am conscious that the Wrexham Unitary Development Plan predates TAN6. I note the requirement in Policy EC3 for there to be an essential agricultural need for isolated buildings. However, I am also mindful that the thrust of the more recently published national policy as set out in TAN6 is more supportive of the establishment of rural enterprises. Policy EC3 also requires there to be no reasonable alternative location. The appellant has purchased land in this area in order to establish a new holding. No convincing justification has been submitted for siting the farm complex within the important designated sites for nature conservation. The site also includes the appellant's dwelling and I have concluded above that the case for this dwelling does not meet the tests in TAN6.
25. Both Policy EC3 and TAN6 emphasise the importance of appropriate siting of new buildings in order to minimise their environmental and visual impact. The buildings, associated structures and storage are located adjacent to a public access and footpath, and within important designated sites for nature conservation. Whilst there is some screening, the development can be seen in views from the lane. The appellant has offered to provide additional planting to replace the fence and further enclose the site. Any planting would take time to mature. The development has a detrimental impact on the environment and surrounding landscape.
26. I conclude that the buildings and other structures do not comply with the terms of Policy EC3 and TAN6 for the reasons given. Appeal A must therefore fail. The harmful impact of the buildings on the character of the area is exacerbated by the visual impact of the caravan.

Environmental Impact Assessment and other matters

27. The site's location in a highly sensitive location part of a SAC, Ramsar site and SSSI would mean that a Habitats Regulations Assessment would possibly be required. The likely significant effects on a nationally and internationally important site would also mean that the development may require an Environmental Impact Assessment. As I am dismissing the appeals and refusing planning permission, then there is little purpose to be served in requiring the submission of an EIA or information to inform an appropriate assessment (i.e. a HRA). Regulation 48 (3) of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 enables an Inspector to refuse a deemed application in these circumstances.
28. 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 ("the WBFG Act"). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I 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 set out as required by section 8 of the WBFG Act. In particular the objective to manage, use and enhance Wales' natural resources to support long-term wellbeing.

Conclusion

29. The appellant has chosen to purchase land in a SAC/Ramsar site/SSSI and has begun to establish a farm complex thereon. The amount of land he owns is relatively modest at around 6 ha, the remainder of the land is rented. The information supplied does not satisfy me that the enterprise meets the four tests in TAN6 for a new dwelling on a new enterprise, for the reasons given above. The development is detrimental to the integrity of the designated sites within which it is located. These designated sites are at the top of the hierarchy of nature conservation designations and therefore merit the highest standard of protection. No convincing justification has been submitted for siting the farm complex within the important designated sites for nature conservation. These buildings and caravan also cause environmental and landscape harm. For the reasons given, I conclude that planning permission should be refused and the appeals on ground (a) therefore fail.

A L McCooley

Inspector