



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 28/02/11

gan Iwan Lloyd BA BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 21/03/11

Appeal Decision

Site visit made on 28/02/11

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 21/03/11

Appeal Ref: APP/H6955/A/10/2141660

Site address: The Lodge, Glascoed Road, Bwlchgwyn LL11 5YG

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 grant of planning permission subject to conditions.
- The appeal is made by Mrs A Lucas against the decision of Wrexham County Borough Council.
- The application Ref BRY P/2010/0045, dated 23 December 2009, was approved on 7 June 2010 and planning permission was granted subject to conditions.
- The development permitted is erection of a boarding cattery.
- The condition in dispute is No 8 which states that: "The building hereby approved shall be used as a Cattery only, as described within the application documentation, and for no other purpose. Should this use of the building cease, the building together with any associated hard standing or slab upon which it stands shall be completely removed and the land restored to its previous condition not later than one month after the uses ceases".
- The reason given for the condition is: "To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area".

Decision

1. I allow the appeal, and vary the planning permission Ref BRY P/2010/0045 for erection of a boarding cattery at the Lodge, Glascoed Road, Bwlchgwyn LL11 5YG granted on 7 June 2010 by Wrexham County Borough Council, deleting condition No. 8 and substituting for it the following condition:

8a) The building hereby approved shall be used as a Cattery only, and for no other purpose.

Background and Main Issue

2. Planning permission was granted in 2005 under reference P/2004/1624 for the erection of a boarding cattery and new vehicular access. Planning permission was subsequently granted in 2010 for a cattery with a lower roof profile than that previously considered. However, the Appellant objects to the planning condition which requires the building be demolished no later than one month after its use ceases.
3. The main issue is whether Condition No. 8 is appropriate having regard to the tests advised for the use of conditions in planning permissions¹. The Circular advises that all of the tests must be satisfied.

¹ Set out in Circular 35/95 'The Use of Conditions in Planning Permissions' (the Circular)

4. As the grant of planning permission illustrates, the principle of the development, is not in question. I also note interested parties comments about the future intended use of the building, its appearance, and the desire for the planning permission be revoked, but these matters are beyond the scope of this application which focuses on the appropriateness of the disputed condition.

Reasons

5. The appeal site is a small parcel of land adjoining The Lodge, located in the countryside within the Special Landscape Area (SLA). The levels of the appeal site are lower than the road and the site is bounded by landscaping.
6. Policy GDP1 of the Wrexham Unitary Development Plan (UDP) is criteria based and seeks to ensure amongst other things that the scale, design and layout accords with the character of the site and makes a positive contribution to the appearance of the locality. UDP Policies PS2 and EC5 similarly indicate that development must not materially affect the countryside, and in the SLA priority will be given to the conservation and enhancement of the landscape.
7. The reason for the condition is stated as '*To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area*'. The Council indicate in its submission that the condition is necessary for the building to be removed in the event that the use ceases since that would be in accordance with the policies cited above. Had the condition not been imposed, I consider, planning permission would have been granted in any event, since it was considered acceptable in 2005 for a taller building than the subsequent 2010 approval. Moreover, the 2005 approval was granted under the same UDP policies as the 2010 planning permission.
8. Retaining the building on the site should the associated use cease would not alter its impact on the character and appearance of the area, since that has already been conclusively determined as acceptable in compliance with above mentioned policies. Furthermore, no reference is made in these policies for circumstances which could allow buildings that have been granted planning permission in the countryside to be demolished when their use ceases.
9. Consequently it has not been shown that the condition is necessary, or relevant, neither is it relevant to the development that would be permitted, since it is not contained in the relevant policies mentioned by the Council. I do not question whether the condition is enforceable or that it is precise. However, it could not be regarded as reasonable since it would severely limit the freedom of the owners and place a continuing restriction on the use of the land where it has not been shown that there is a good planning reason for that restriction.
10. Accordingly, I find that the condition should be deleted. The planning permission is therefore varied and the appeal succeeds. Nevertheless, I do consider that the intended use of the building should be made clear for the proper planning of the area and having regard to the protection afforded to the countryside against unjustified development. This should say no more than what the building is approved for having regard to UDP Policy PS2. I will vary the permission by deleting the disputed condition and substituting another. No other matters have been raised which outweigh those which lead me to that decision.

Iwan Lloyd

INSPECTOR