



Penderfyniad ar yr Apêl

Appeal Decision

Ymweliad â safle a wnaed ar 01/05/13

Site visit made on 01/05/13

gan Kay Sheffield BA(Hons) DipTP
MRTPI

by Kay Sheffield BA(Hons) DipTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

an Inspector appointed by the Welsh Ministers

Dyddiad: 21/05/13

Date: 21/05/13

Appeal Ref: APP/H6955/A/13/2194007

Site address: Land to rear of 4 Llys y Pant, Rhosllanerchrugog, Wrexham, LL14 2DJ

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 Julie Selvey against the decision of Wrexham County Borough Council.
- The application Ref P/2012/0737, dated 20 August 2012, was approved on 4 February 2013 and planning permission was granted subject to conditions.
- The development permitted is an all weather area for personal horse riding use.
- The conditions in dispute are Nos. 2, 3, 4, 5 and 6 which, together with the reasons given for their imposition, are set out in the decision.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether the conditions in dispute are reasonable and necessary in the interests of the living conditions of the occupiers of nearby properties with regard to privacy, the biodiversity of the site and the character and appearance of the area.

Reasons

3. The appeal site forms part of a larger area of land used by the owners of 4 Llys y Pant for the stabling, grazing and riding of horses kept for their personal use. The holding extends to approximately 2 acres, running in a southerly direction from the boundary of the rear garden of the dwelling and its neighbour, 5 Llys y Nant and is divided into various sections by fencing. One of these sections measuring approximately 16 metres by 39 metres lies to the rear of No. 5 and is enclosed by close boarded fencing approximately 1.5 metres high apart from the western boundary which is marked by a post and rail fence. It is this area of land which has planning permission for use as an all weather riding area, some of the conditions of which are in dispute and are the subject of the appeal.

Living Conditions

4. Condition 2 of the permission states that: *"This permission shall relate to the area of land shown in orange on the approved plan only and the area of land shown in green*

shall not be used as a riding area". The reason for the condition is "To protect the amenities of the occupiers of nearby properties".

5. No. 5 is a relatively new property and the depth of its garden abutting the appeal site is very shallow with approximately 4 metres separating the rear elevation of the dwelling and the site boundary. The rear elevation of No. 5 contains large windows at ground floor level which serve a main habitable room and a conservatory which is a recent addition. The windows to these rooms, together with the garden, can be seen from the appeal site. The condition prevents an area to a depth of 5 metres from the boundary being used for riding, thus increasing the distance between the riding area and No. 5 in order to protect the privacy of its occupants.
6. It is acknowledged that the appeal site is already used for riding and that the only change would be to its surface, otherwise its relationship with No. 5 would remain as at present. However, the installation of a new surface would allow the site to be used for riding for longer periods of time and although the appellant contends that personal circumstances would continue to restrict its use to short periods at the end of the working day, weekends and holidays, this could change in the future. The all weather surface proposed could therefore result in a significant increase in the use of the appeal site which I am not satisfied could be reasonably controlled by condition.
7. Whilst the proximity of No. 5 and the depth of its rear garden would have been evident to the occupiers before they moved into the property, I consider that the increased use of the appeal site which a change in surface would allow would be beyond that which could be reasonably expected without causing harm to privacy.
8. The appellant contends that the reduction in the size of the area available for riding by 5 metres would render it unfit for purpose. However, no definitive evidence of this has been submitted and whilst it is acknowledged that the location of the all weather area in view of the main dwelling would be advantageous for safety reasons, I do not consider that this carries sufficient weight to overcome my concerns regarding privacy.
9. Given the close proximity of the site to No. 5 and the increase in the level of use of the site the change in the surface would allow, it is concluded that prohibiting the use of the 5 metre deep strip of land as set out in condition 2 is reasonable and necessary to protect the privacy of the occupants of No. 5 in their use of the house and garden as supported by Policy GDP1 of the Wrexham Unitary Development Plan, 2005 (UDP).

Biodiversity

10. Condition 3 of the permission states that: *"The development shall only be carried out in strict accordance with the "Reasonable Avoidance Measures" contained within the Ecology Assessment as carried out by Marches Ecology and dated 9 January 2013 approved as part of this application".* The reason for the condition is *"To protect named species/habitats/biodiversity which would otherwise be damaged/lost by the development hereby permitted"*.
11. The appeal site is located close to the boundaries of the Stryt las a'r Hafod Site of Special Scientific Interest (SSSI) and Johnstown Newt Sites Special Area of Conservation (SAC). These sites support a nationally important population of statutorily protected Great Crested Newts and the Council has identified the appeal site as being within a green corridor considered important for foraging and dispersing newts from the SAC. Although the submitted Ecology Statement concluded that the proposal presented no risk to the newts and that Reasonable Avoidance Measures

were neither justified nor required, it nevertheless suggested the adoption of a precautionary approach given the importance of the population in the local area.

12. Given its location, there is the potential for newts to be found on the site and if this occurred work would have to cease immediately. The precautionary approach would ensure that there were no newts on the site before work commenced and although the measures recommended included a hand search of the site for amphibians by a suitably licensed ecologist and the cutting of the vegetation to a height of between 0.1 and 0.15 metres if not below that height already, I do not consider that these works would be too onerous given the limited size of the site. I therefore conclude that condition 3 is reasonable and necessary and in accord with Policy EC6 of the UDP.

Character and appearance

13. Conditions 4, 5 and 6 all relate to the landscaping of the site. Condition 4 states that: *"Within three months of the commencement of development, full details of a hard and soft landscaping scheme together with a timescale for implementation of works shall be submitted to and approved in writing by the Local Planning Authority"*. Condition 5 requires that *"The landscaping scheme submitted and approved in connection with condition no. 4 shall be fully implemented in all respects within the agreed timescale and in strict accordance with the approved scheme"* and condition 6 goes on to require that *"The landscaping scheme as carried out in connection with condition no. 5 shall be permanently retained. Any planting becoming severely damaged or seriously diseased, or is in poor physiological condition and/or are removed without the written permission of the Local Planning Authority shall be replaced with trees or shrubs and within a timescale all to be submitted to and approved in writing by the Local Planning Authority"*. The reason, which is the same for each of these conditions, is *"To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area"*.
14. Although it is not clear from the decision notice, the Council confirmed in its statement that the conditions 4, 5 and 6 are considered to be necessary to ensure the landscaping of the area within which riding is prohibited by condition 2. Whilst condition 2 confirms the size of this area it does not provide for its definition on the ground and if riding is to be prohibited it is necessary that the area is visibly separate from the remainder of the appeal site. Conditions 4, 5 and 6 make provision for the submission and approval of a suitable scheme, its implementation and retention.
15. On this basis I consider that conditions 4, 5 and 6 are reasonable and necessary in order to ensure that the area within which riding is prohibited by condition 2 is satisfactorily defined and retained on the ground in a manner which does not detract from the character of the area as required by Policies PS2, EC1, and GDP1 of the UDP.
16. Whilst the appellant contends that the conditions are unreasonable particularly with regard to the cost, I consider that a scheme appropriate to the semi-rural setting of the site would not require dense planting which, in any event, could harm the living conditions of the residents of No. 5 through loss of light.

Conclusions

17. It is therefore concluded that the conditions in dispute are all reasonable and necessary to ensure that the development is acceptable. For the reasons given above, and having had regard to all other matters raised, the appeal is therefore dismissed.

Kay Sheffield

Inspector