



Penderfyniadau ar Apêl

Gwrandawriad a gynhaliwyd ar 12/01/10

Ymweliad â safle a wnaed ar 12/01/10

Appeal Decisions

Hearing held on 12/01/10

Site visit made on 12/01/10

gan / by Iwan Lloyd BA BTP MRTPI

**Arolygydd a benodir gan Weinidogion
Cymru**

**an Inspector appointed by the Welsh
Ministers**

Dyddiad/Date 01/04/10

Appeal Ref: APP/H6955/C/09/2104074

Site address: Land on the west side of Hafod Road, Ruabon, Wrexham LL14 6ET

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 Gary Billington against an enforcement notice issued by Wrexham County Borough Council.
- The Council's reference is PG/2007/0016.
- The notice was issued on 2 April 2009.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a concrete batching plant.
- The requirements of the notice are to:
 - a) Remove the concrete batching plant, associated offices and staff facilities from the land edged red.
 - b) Cease all commercial vehicle parking and operations associated with the unauthorised concrete batching plant.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal Ref: APP/H6955/A/09/2105170

Site address: Eco Readymix, Dennis Ruabon Site, Hafod Road, Hafod, Wrexham LL14 6ET

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 planning permission.
- The appeal is made by Mr Gary Billington against the decision of Wrexham County Borough Council.
- The application Ref ESC P/2008/0896, dated 12 August 2008, was refused by notice dated 25 November 2008.
- The development proposed is change of use from stocking area to use for concrete and mortar batching.

Decisions

Appeal Ref: APP/H6955/C/09/2104074

1. I direct that the enforcement notice be corrected by the deletion of the contents of paragraph 5 (b) and the substitution therefor of the following: 'Restore the land to its former condition before the breach took place'.
2. I direct that the enforcement notice be varied by the substitution of "six months" for "twelve months" as the period for compliance.
3. Subject to this correction and variation I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal Ref: APP/H6955/A/09/2105170

4. I dismiss the appeal.

The Notice

5. The Notice alleges operational development, but the requirement in paragraph 5 (b) requires that the development cease all commercial vehicle parking and operations associated with the unauthorised concrete batching plant. This requirement exceeds what the Notice attacks, as an allegation of operational development cannot require a cessation of a use of land. In this case, I can correct the Notice by deleting the requirement and substituting in its place that the land is restored to its former condition before the breach took place. At the hearing, the Appellant and the Council agreed that this correction did not cause them injustice.

Preliminary Matters

6. At the site visit, the Council withdrew its reason for refusal on highway safety and indicated that adequate visibility could be achieved from the site entrance. The concern on highway safety is no longer a disputed matter in either appeal, and I am also satisfied that the access is satisfactory.
7. At the hearing, the Appellant supplied additional information on surface water management of the site, having regard to the concerns on the relationship of the development and the adjacent international and national designated site of ecological importance that include amphibian populations of great crested newts (GCN). The Council and the Countryside Council for Wales (CCW) were given an opportunity to comment on the additional information. CCW indicated that the water management system is satisfactory in principle, but seeks that suitably worded planning conditions be imposed on terrestrial fencing and that open gullies are avoided. These comments were endorsed by the Council that the matter could be dealt with by planning conditions. The appeal is considered on the basis of the additional information and the representations which followed.

The appeal on ground (a), the deemed application and the planning appeal

8. The main issues in this case are therefore as follows:

- whether the development would materially undermine local and national planning policies that seek to control development in the countryside, and
- whether there is sufficient information to assess on the basis of the available evidence, that the development is likely to cause harm to the nearby Stryt Las a'r Hafod Site of Scientific Interest (SSSI) and Johnstown Newt Sites Special Area of Conservation (SAC).

Sustainability

9. The appeal site is located to the north-west of Dennis Ruabon tile works, accessed off Hafod Road. It is located outside the settlement boundary and designated employment areas, as defined in the Wrexham Unitary Development Plan (UDP), which was adopted in 2005. Hafod Road links to the B5426 which in turn connects to the A483. Johnstown is located some 380m to the west of the site.
10. The batching plant provides ready-to-use mortars, screeds, renders and concrete to the building industry. The Appellant contends that the site is intended to serve a wide and dispersed catchment area, principally including Wrexham and the area south of the Borough. The Appellant asserts that the development is located in the centre of the catchment, serving 92% of the population in a 10km radius. The Appellant argues that most traffic to and from the site is by road no matter where it is located, and this is considered sustainable. Furthermore, other sustainable factors of the development should be considered because the facility is the only wet batch plant in the Borough which is able to serve the building trade with a consistent product. Other operators provide only dry silos, which results in material having to be delivered and mixed by traditional mixer trucks. The Appellant contends that the site is an existing industrial use which could be put to general industrial use without planning permission with such activities only restricted by extant planning conditions.
11. The appeal site is presently hard surfaced with concrete paving. Planning permission was granted in 1976 for the surfacing of the land to be used as a stocking ground for finished products from the adjoining tile works. Planning condition 2, restricted the use to such purposes excluding any waste and spoil storage. A subsequent planning permission in 2006 granted an extension of the range of permitted storage items, including tiles, plant and mobile offices, and was also conditioned to restrict the development to the adjacent works. From the Council evidence, this permission was not implemented.
12. Although not a designated site, the site is listed in the UDP as an employment site. However, the link between the appeal site and the adjoining works was one of ancillary storage, defined by the relevant planning condition. The adjoining works has since ceased operating, and consequently so would any ancillary activity associated with that use. The continuation of the development alleged cannot rely on the 1976 planning permission, as this was restricted to the primary use of the adjoining tile works. What is considered now is the establishment of a new planning unit involving operational development. Consequently, whilst an historical employment site and regarded as previously-developed land, it is nevertheless, a new development for employment purposes, and UDP policy PS1 is engaged.

13. This policy directs new development to within the settlement limits/employment areas. I take the view that it seeks new development to be located within employment areas as defined in the plan. This historical employment site is listed in the plan, but it is not designated as such, and I consider the underlining reason would have been to ensure that sites are located in sustainable locations. This approach is amplified by Planning Policy Wales (PPW) paragraphs 2.3.2, 7.17, 7.6.2, by promoting resource-efficient settlement patterns and minimising the demand for travel, especially by private car. PPW indicates not all previously developed sites are suitable for development, in particular, because of location or presence of protected species or valuable habitats.
14. There is no permissive policy in the development plan which relates to this site, only that new development is directed to within settlement limits. Despite the fact that it is an existing employment site and could be reused or re-developed that should be in the context of the lawful use of the site as a whole and not in fragmented parts. The development plan provides for a firm basis for rational and consistent decisions, and any re-development of the whole site should be taken in the context of the plan. I consider there are no planning policies which pull in different directions, as referred by the Appellant in the case of *R(Cummins) v Camden LBC* [2001] EWHC Admin 1116. The relevant strategic UDP policy PS1 provides the rational basis for locating new development to ensure a resource-efficient and sustainable pattern of building. The development of the site undermines the strategy in UDP policy PS1 for seeking to ensure that presently vacant or underused sites allocated in the plan for employment purposes are considered before sites which are located outside settlements and have no purposive designation in the plan.
15. Despite the Appellant's analysis of the development's catchment area, I am not convinced that the appeal site would perform as well as other suitable designated employment sites in the settlement in sustainability terms. This is particularly, when most of the development sites and in turn customers of the product are likely to be closer to a designated site than is the case in relation to the location of the appeal site. The nature of the development is dependant on transport by road, but the opportunities for different modes of travel increase within settlement boundaries.
16. I consider the location of the appeal site increases the dependency of the development on transportation of raw and ready to use materials by lorries where that dependency is likely to be less than a site allocated in the settlement. National and local planning policies direct development to settlements for sustainability reasons.
17. I conclude that the development would materially undermine local and national planning policies that seek to control development in the countryside. The development conflicts with UDP Policy PS1.

Ecological Issues

18. The appeal site is located within and adjacent to the SAC and SSSI and their ecological features of interest include a variety of amphibian species and in particular GCN, a European Protected Species.

19. The appeal site is hard surfaced with concrete paving. A protected species survey was carried out in 2008 on behalf of the Appellant. It concluded that the site provided little opportunity for foraging or sheltering GCN, but there were high numbers of the species near the appeal site where some of the newt barriers had not been managed. Accordingly, it was considered that there was a slight possibility that GCN may cross the site and that the perimeter of the site should be fenced with permanent amphibian exclusion fencing. As part of the mitigation proposals, an area to the south of the site would be transferred to a conservation organisation where two small ponds would be created to provide a terrestrial corridor and link.
20. In this case, the appeal site itself does not provide a suitable terrestrial habitat for GCN. From the evidence, the survey has established their presence; location and terrestrial pathways are unlikely to be affected. Paragraph 6.3.7 of Planning Policy Wales Technical Advice Note 5 (TAN 5): *Nature Conservation and Planning* September 2009, indicates that development should not be granted without the planning authority having satisfied itself that the development, either would not impact adversely on any European protected species, or that all three tests for the eventual grant of a regulation 44¹ licence are likely to be satisfied. The surface of the site is hardcore and the development which has already occurred on this impermeable base is unlikely to result in harm to the species or its habitat, having regard to the evidence presented. CCW has indicated that the Appellant has addressed the issues associated with the protection of the species in its response to the appeal.
21. In relation to the SAC and SSSI, the project is not directly connected with or necessary to site management for nature conservation. In order to determine whether the proposal is likely to have a significant effect on the internationally important interest features of the site, alone, or in combination with other plan or projects, additional information was requested, in relation to surface water management of the site. This was provided at the hearing, and CCW has indicated that this is satisfactory, providing suitable planning conditions are imposed. Although CCW has previously indicated that a Regulation 48 appropriate assessment is needed, but having regard to its latest response to this appeal on the additional information provided, I am satisfied that compliance with conditions would establish that the project would now not adversely affect the integrity of the SAC and SSSI. This being in accord with the advice contained in TAN 5 Annex 3 and Figure 1.
22. Having regard to these matters and the Regulation 48 appropriate assessment carried out in respect of the Environmental Permitting Regulations 2007, I conclude that there is sufficient information to assess on the basis of the available evidence, that the development is not likely to cause harm to the nearby Stryt Las a'r Hafod Site of Scientific Interest (SSSI) and Johnstown Newt Sites Special Area of Conservation (SAC). As such the development does not conflict with UDP Policy EC6.

¹ The Conservation (Natural Habitats &c) Regulations 1994, Regulation 44

Conclusions on the ground (a), the deemed application and the planning appeal

23. Notwithstanding my favourable conclusion for the Appellant on the ecological issue, this does not outweigh the argument against the development on sustainability grounds. For the reasons given above, I conclude that the appeals on ground (a), the deemed application and planning appeal should not succeed.

The appeal on Ground (g)

24. The ground of appeal is that the time given to comply with the requirements of the notice is too short. The Appellant argues that six months is too short a period to fulfil existing contracts, find an alternative site with planning permission and service contractual obligations through other batching plants operators at reasonable terms. A period of 12 months is sought.
25. The Council indicate that the plant is relatively simple to dismantle, that there is a large supply of vacant employment sites available and the Appellant had ample time to formulate a contingency plan in the event that the appeals are dismissed.
26. However, the Appellant is entitled to assume success in these appeals and is entitled to a reasonable period for compliance after the notice takes effect. I must balance the Council's reasons for issuing the notice in the public interest against the burden placed on the Appellant, his business, employees and customers.
27. In my view, a period of 12 months would strike the appropriate balance between these two conflicting interests so there would not be a disproportionate burden placed on the Appellant's business to honour existing contracts and to find a suitable alternative location for his business.
28. To this limited extent, the appeal on ground (g) succeeds.

Iwan Lloyd

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Andrew Ambrose CEnv MRICS Appellant's Agent

Mr Gary Billington Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Mathew Phillips MSc MRTPI Wrexham County Borough Council

Mr Stephen Griffiths BA Hons Wrexham County Borough Council

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Copy of planning permission ESC P/2005/1219 and plans
- 2 Information from Agent 14 January 2010 and CCW's response
- 3 Council's response 20 January 2010