



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 13/04/21

gan **A L McCooey, BA (Hons) MSc MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 27/7/21

Appeal Decision

Site visit made on 13/04/21

by **A L McCooey, BA (Hons) MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 27/7/21

Appeal Ref: APP/D6820/A/20/3262380

Site address: Dol Aur, Beulah, SA38 9QB

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 & Mrs E & P Cowton against the decision of Ceredigion County Council.
 - The application Ref: A190793 dated 8 November 2019, was refused by notice dated 2 July 2020.
 - The development proposed is a change of use from garage to a one-bedroom holiday flat.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr & Mrs E & P Cowton against Ceredigion County Council. This application is the subject of a separate Decision.

Procedural Matters and Background

3. The description of the development on the original application form and the decision notice included a "granny" annex at ground floor level in the former garage, that shared an access and facilities with the house. The Local Planning Authority deemed that this element was ancillary and incidental to the enjoyment of the dwelling/house. The annex is used for purposes incidental to the enjoyment of Dol Aur and occupied by a relative of the applicants. In these circumstances the Local Planning Authority has confirmed that the annex did not constitute development. The appeal form states that the appeal is for the change of use of garage to a one-bedroom holiday flat. This is what is before me in this appeal and I have amended the description to reflect the matter that constitutes development.

Main Issues

4. The main issues are the effect of the development on the living conditions of adjoining residents; on highway safety; and on internationally important nature conservation sites

Reasons

5. The site is located within the linked settlement of Beulah. The site is within a row of relatively recently constructed dwellings along the main road to the west of the village. The garden of the dwelling to the east is modest and the land to the rear of the appeal building is in the ownership of the next dwelling. The host dwelling was granted planning permission in 2010. A double garage on two floors was part of this planning permission. The Local Planning Authority confirms that toilet and sinks were provided. The annex and store room are at ground floor and an external stair affords access to the first-floor holiday accommodation in the roof space. This comprises of a kitchen, living room, bathroom, bedroom and a dressing room (or dog room). The application was a retrospective one with the use having commenced in 2018.
6. The Local Development Plan and national policy are broadly supportive of additional tourist accommodation. The main policy referred to in the first reason for refusal is Policy DM06 High Quality Design and Placemaking. Criterion 7 seeks to protect the amenity of occupiers of nearby properties from significant harm in relation to privacy, noise and outlook. Concerns have been raised regarding loss of privacy and noise and disturbance issues as a result of the holiday let and the frequency of traffic associated with arrival and leisure trips.

Effect on living conditions

7. In terms of overlooking of adjoining property, whilst the holiday let is at first floor level, the windows are a Velux type in the roof plane. As noted above, those to the rear adjoin the extended garden and outbuildings of a dwelling that is some distance away. The distance involved and relationship of the buildings means that overlooking of the dwelling is not an issue. The objectors refer to patrons sticking their heads out of the Velux windows and viewing their garden area. This could be addressed by restricting the opening of the rear windows. I note that the objectors refer to issues with noise from use of the apartment and the adjoining hot tub. The proposal is for a one-bedroom unit, which would restrict the occupation and use to a low level. There is no evidence of any complaints to the Council regarding noise or disturbance. The appellants point out that a relative lives in the annex below and noisy behaviour would not be accepted. The extra traffic from a 1-bed holiday flat would be modest and given the location and separation distances would not be significant. The appellants have confirmed that the provision of non-opening Velux windows in the rear elevation and the removal of the hot tub can be the subject of planning conditions.

Access and highway safety

8. The proposal was to gain access from a minor road to the east off the B4333. There is a track across the field that leads to the rear of the site. The access and part of this track is in separate ownership. The appellants have provided evidence of a right to cross this land. The level of use and terms of the right of way are disputed by the owner. There was also a dispute related to works affecting the surfacing of the track. However, these are private matters and not of direct relevance to this appeal.
9. The Council objects to the use of this track to access the development because appropriate visibility splays cannot be provided and retained by the appellants as the land required is not under their control. The access is existing and serves the appellants' and the other owner's land. The level of traffic on the minor road and using the access would be low. There have been no recorded accidents on this road or at its junction with the B4333. The parties agree that traffic speeds can be estimated

at 25 mph. The required visibility splays¹ would therefore be 2m by 31m and the actual available splays are 2m by 20m to the north and unrestricted to the south. I consider that the low traffic levels and speeds and the evidence of the safe operation of the existing access, means the access would not adversely affect highway safety.

10. In the event that the rear access cannot be provided for any reason, the appellants have indicated that the existing access to the main dwelling can be used. No highway safety concerns have been raised in regard to the use of the existing access. The increased traffic would be low and would not affect the amenities of other adjoining occupiers. Overall, I conclude that the proposal would comply with Policy DM06 for the reasons set out above. In these circumstances I make no comment on the approval for two holiday dwellings in Tresaith cited by the appellants.

Effect on ecological interests

11. In January 2021 Natural Resources Wales (NRW) published the results of its Compliance Assessment of Welsh River Special Areas of Conservation against Phosphorus Targets. The site lies within the catchment of the Afon Teifi Special Area of Conservation (SAC) which is currently failing to meet phosphates targets. The proposal was screened in accordance with guidance issued by NRW². It was decided that the drainage from the development is potentially capable of increasing the levels of phosphates discharged into the catchment of the SAC. In these circumstances, it was necessary to undertake a Habitats Regulations Assessment (HRA) under the Conservation of Habitats and Species Regulations 2017. The HRA is attached as an Annex. The development is likely to have a significant effect on the SAC in relation to phosphorus inputs because it is likely to be a source of additional phosphorus and there is a pathway for impacts. The development would have an adverse effect on the integrity of the Afon Teifi SAC (European site) and its features, alone or in combination with other plans and projects. The appellants' proposed mitigation measures would not address these impacts for the reasons set out in the HRA. The conclusion reached, based on the particular circumstances of this case, was that it is beyond reasonable scientific doubt that the scheme, either alone or in combination with other projects, would have an adverse effect on the integrity of a European Site, namely the Afon Teifi SAC. In these circumstances it would conflict with guidance on the importance of the protection of European sites in PPW and TAN5 as well as Policy DM14 of the LDP.

Other Matters

12. This is an existing building and the only loss of amenity space would be to provide a parking space to serve the development, which would not significantly affect the provision for the existing house. I also note that the appellants own 2.3 acres of adjoining land to the rear.
13. The Local Planning Authority alleges that a parcel of land outside the curtilage of the main dwelling has been fenced off as an amenity area for the holiday let without planning permission. The appellant contends that it has always been part of the curtilage of Dol Aur. This area is shown on the plans but does not appear to have been included within the appeal site. The Council also refers to unauthorised development in the field/paddock area behind the dwellings. The glamping pod that was present has been removed but there was some domestic paraphernalia and play equipment at the

¹ Manual for Streets Table 7.1

² Advice to planning authorities for planning applications affecting phosphorus sensitive river Special Areas of Conservation

time of my site visit. There is no evidence that the play area has any connection to the holiday let. The Local Planning Authority considers that this development does not have planning permission. It appears that all this alleged development is not within the appeal site and is not therefore before me. It is a matter for the Council to consider whether enforcement action should be taken in order to remedy breaches of planning control

14. The harm that would result from the creation of a new planning unit was not explained by the Local Planning Authority. In any event, the appellants have offered to enter into a planning obligation (if necessary) to tie the holiday let to the main dwelling. This was not considered to be necessary in this case, as the appeal is dismissed. The other appeal decision referred to by the Local Planning Authority related to a larger tourism development in a timber building (with decking) that was in a more built-up location. I have considered the evidence and conclude that the location and circumstances of that appeal are not comparable to this case.

Conclusion

15. Having regard to the above and having considered all other matters raised by the appellants in support of the development, I conclude that the appeal should be dismissed. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of building healthier communities and better environments.

A L McCooey

Inspector

Annex – Habitat Regulations Assessment

Preliminary Matters

1. In January 2021 Natural Resources Wales (NRW) published the results of its Compliance Assessment of Welsh River Special Areas of Conservation (SAC) against Phosphorus Targets. The site lies within the catchment of the Afon Teifi SAC which is currently failing to meet the phosphates targets. The drainage from the development would flow into the river or its tributaries. The descriptions of the site and the proposal are set out in the main decision.
2. The need for Habitats Regulations Assessment (HRA) is set out within Article 6 of the EC Habitats Directive 1992, which is transposed into British Law by the Conservation of Habitats and Species Regulations 2017 (the Regulations). The Inspector, as competent authority with respect to the Regulations, will need to decide whether 'likely significant effects' alone or in-combination with other plans or projects, can be ruled out based on the information provided by the parties. The competent authority may agree to the project only after ascertaining that it will not adversely affect the integrity of the European site.
3. Whilst the Regulations provide strict protection, they are not a prohibition on new development or activities. Instead, they involve a case-by-case examination of the implications for each European protected site, its qualifying features and its conservation objectives. There is no statutory method for undertaking an HRA and the approach can vary on a case-by- case basis. Nonetheless, guidance issued from the European Commission³ sets out a four-stage assessment process involving Screening; Appropriate Assessment (AA); Assessment of Alternatives and Imperative Reasons of Overriding Public Interest (IROPI). AA considers the implications of the proposal for the European site in view of its conservation objectives. Steps 3 and 4 are collectively known as derogation.
4. The purpose of this HRA is to report on the impacts of the scheme on the Afon Teifi SAC, which is a European protected site. Conscious of the requirements of Regulation 63(3) and 63(4) regard has been had to the representations of Natural Resources Wales (NRW), the Local Planning Authority, the appellants and the general public in carrying out this assessment.

Screening

5. As can be seen from the appeal details, the application was refused in July 2020, which was prior to the notification from NRW. The Local Planning Authority did not formally screen the proposal under the Regulations. The Council did carry out a screening exercise at the appeal stage (copy attached) in accordance with the guidance issued by NRW.
6. The entry in the register of European sites for Wales states the habitat types and species for which the site is designated as a SAC. The habitats of importance are: Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation and Oligotrophic to mesotrophic standing waters with vegetation of the *Littorelletea uniflorae* and/or of the *Isoëto-Nanojuncetea*. The species that are a primary reason for the selection or a qualifying feature of the site are: Sea lamprey (*Pteromyzon marinus*), Brook and River Lamprey (*Lampetra*

³ Assessment of plans and projects significantly affecting Natura 2000 sites' (2001)

species), Atlantic Salmon (*Salmo salar*), Bullhead (*Cottus gobio*), European otter (*Lutra lutra*) and Floating water-plantain (*Luronium natans*).

7. The advice of NRW⁴ has been followed in screening the development that is the subject of this appeal. Considering the criteria identified in the advice. The project will increase the volume of foul wastewater. There was no indication that the project will improve the quality of the wastewater discharges from the site. The proposal does not involve a private treatment plant.
8. It is proposed to connect to the existing public sewer. The sewerage undertaker has confirmed that the area is served by the Beulah waste water treatment works, the environmental permit for which does not have the required phosphate conditions in place. Consequently, there is no capacity to treat the additional wastewater and the additional phosphate from the proposed development. In addition, the sewerage undertaker has confirmed that the necessary treatment capacity to remain within existing discharge permit limits will not be delivered within the current Asset Management Plan (AMP) period.
9. Recent caselaw has confirmed that the screening process must exclude any proposed mitigation measures (other than embedded mitigation). Mitigation can be taken into account as part of the AA.
10. Applying the NRW advice, the project does not fall within the types of developments that can be screened out as not likely to have a significant effect on the SAC in relation to phosphorus inputs because it is likely to be a source of additional phosphorus and there is a pathway for impacts. The project cannot therefore be screened out as not likely to have a significant effect on the SAC, nor is it functionally linked to the European site. From the evidence before me, I conclude that there would be likely significant effects arising from this development and therefore an AA is necessary.

Appropriate Assessment

11. The appellants argue that the only additions to the wastewater generated as a result of the proposal are a shower, washing machine and midi dishwasher. This is not the complete picture. NRW guidance states that **any increase in occupancy** (*my emphasis*) must be taken into account. This implies that the effects of any project, no matter how small, should be considered in a HRA. The garage approved as part of the dwelling could not have increased the occupancy of the dwelling. However, the annex that is occupied by an elderly family member could have resulted in an increase in occupancy. However, this aspect is not development and is not subject to planning control. It is referred to for information only. The holiday let (the project) provides tourist accommodation which would (or does) increase the occupancy of the site. This has increased the volume of wastewater emanating from the site, with consequent significant effects on the SAC as described in the advice from NRW and related information.
12. The appellants state that they have extensively researched methods to avoid or reduce the effects of phosphates. The evidence appears to support the contention that detergents used in washing products contain little or no Phosphorous. The appellants' proposal to use environmentally friendly washing, dishwasher powders and detergents would make little difference to the Phosphorous inputs. The suggested filtration of the incoming water supply would not address the waste water issue at all.

⁴ Advice to Planning Authorities for Planning Applications Affecting Phosphorus Sensitive River SACs

NRW has not identified any issue with public water supplies containing phosphates. These measures would not avoid or reduce the effects of the project and are not deemed to be mitigation.

13. The appellants suggest that any planning permission could be limited to a seasonal operation only as applies to caravan parks⁵. This measure would reduce the extent of the increased occupancy but would not avoid the significant effects outlined above.
14. The appellants refer to the possible provision of a package waste water treatment plant avoiding connection to the public sewer altogether. This is mooted as a possible future consideration in the event that the appellants' views are not supported. The appellants do not consider this to be proportionate and also state that the geology of the area would make any below ground installation challenging.
15. The appellants correctly state that they have no control over phosphate removal by the statutory sewerage undertaker in the treatment works. Their evidence is that there is not an option for private treatment, as there is no effective small-scale removal technology available at a reasonable cost. The appellants refer to pollution from farm effluent discharges. The NRW compliance assessment and resultant actions has taken all potential sources into account. The actions aim to tackle all sources or inputs of which waste water is one. This HRA is addressing the impact of the development that is the subject of this appeal.

Conclusions on the AA and Derogation

16. The views of NRW have been sought and are reflected in this assessment, which follows the approach advocated in the NRW's advice and consultation replies. NRW agrees with the conclusions reached in this assessment.
17. The conclusions of this AA are that the development or project (despite its small scale) would have an adverse effect on the integrity of the Afon Teifi SAC (European site) and its features, alone or in-combination with other plans and projects. The proposed mitigation would not address the impacts identified by NRW for the reasons set out above.
18. I now need to consider steps 3 and 4 of the HRA process⁶ namely the 'Assessment of Alternative Solutions' and Imperative Reasons of Overriding Public Interest (IROPI). Alternative solutions mean a different type of proposal, or a different location, etc. There are no alternative solutions before me and given the nature and scale of the development or project, IROPI does not apply either.

Conclusion

19. I have taken into account all the available evidence and have adopted the precautionary principle in carrying out this HRA. I have considered the potential impacts on the integrity of the site that have been identified by NRW. Account has been taken of the information supplied by the Local Planning Authority. The evidence of the appellants and the mitigation measures put forward have been assessed.

⁵ Normally from 1 March to 31 October

⁶ See paragraph 3 above

20. I conclude that it is beyond reasonable scientific doubt that the scheme, either alone or in combination with other projects, would have an adverse effect on the integrity of a European Site, namely the Afon Teifi SAC. In these circumstances planning permission must be refused for this reason. This conclusion is based on the particular circumstances of this case.

A L McCooey

Inspector