



## Appeal Decision

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by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 16/10/2023

Appeal reference: CAS-02502-Z9G7N6

Site address: Dol Aur, Beulah Road, Beulah, SA38 9QB

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- 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 Paul Cowton against the decision of Ceredigion County Council.
  - The application Ref A211098, dated 15 November 2021, was refused by notice dated 16 September 2022.
  - The development proposed is 'retrospective application for the change of use of first floor store to one holiday letting unit & surfacing of accessway'.
  - A site visit was made on 29 August 2023.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs has been made by Mr & Mrs Paul Cowton against Ceredigion County Council. This application is the subject of a separate decision.

### Preliminary Matters

3. A preceding planning appeal under reference APP/D6820/A/20/3262380 was dismissed in July 2021. This was for 'a change of use from garage to a one-bedroom holiday flat'. The appeal was turned down because of the adverse effect of the development on the integrity of a European Site, namely the Afon Teifi Special Area of Conservation (SAC).
4. The previous Inspector as part of the assessment undertook a Habitats Regulations Assessment (HRA) under the Conservation of Habitats and Species Regulations 2017. The preceding appeal development connected the holiday unit to the public sewer system. It was considered that the appeal development would increase the volume of foul wastewater. This in turn would connect to the Beulah waste-water treatment works (WWTW). It was confirmed that Beulah WWTW was not meeting the environmental permit issued to it and would not have the required phosphate conditions in place. It was confirmed in the preceding appeal decision that there was no capacity to treat the additional wastewater and the additional phosphate from the appeal development. The sewerage undertaker confirmed that the necessary treatment capacity to remain within

existing discharge permit limits would not be delivered within the current Asset Management Plan (AMP) period. Natural Resources Wales (NRW) published the results of its Compliance Assessment of Welsh River Special Areas of Conservation against Phosphorus Targets. The Afon Teifi SAC was failing to meet phosphates targets.

5. Consequently, the preceding appeal development was turned down because it was a source of additional phosphorus and a pathway for adverse impacts on the integrity of the Afon Teifi SAC and its features, alone or in combination with other plans and projects. Furthermore, it was considered that the appellants' proposed mitigation measures would not address those impacts as set out in the preceding appeal HRA.
6. This appeal is submitted to seek to address and overcome the previous appeal decision and the Council's refusal of planning permission. It would change the current arrangement of foul water disposal from a public sewer connection to a private treatment plant (three options of mitigation are offered).
7. The Council refused the application the subject of this appeal because the 'provision of a private sewer arrangement where a connection to a public sewer is feasible is considered contrary to Welsh Government circular 008/2018, as such, the proposed development by virtue of the resultant increase in the occupancy of the site would result in a net increase in phosphate levels within the Afon Teifi SAC and in contravention of the Conservation of Habitats and Species Regulations 2017, as amended'.
8. The appellants would utilise a field to the south-east of the appeal building. This is within the appellants ownership and control and is identified as land outlined in blue on the submitted plans. Option 1 is to allow drainage and phosphates mitigation in the adjoining field. Through its Ecological Assessment it seeks to achieve 'phosphates neutrality'. The assessment advocates that the field is managed so it provides a species-rich lowland neutral grassland, woodland planting, and a seasonal restriction on the occupancy of the holiday let unit. Option 2 would be to connect to a private treatment plant with drainage field. This would be treated by either anaerobic and/or chemical dosing and discharged to a drainage field via reed bed if required. The appellants have opted for Private Treatment Plant Manufacture Graf 'One2Clean P+', with or without chemical dosing. A third possible solution would have been a cesspool, but the appellants have now discounted this alternative.
9. The appeal considers the application for a change of use. I conclude as did the previous Inspector that 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'. I cannot accept the appellants contention that the phosphates loading would have already been accounted for in the WWTW permit since 2010 and no additional loading would then occur, because of this appeal development.
10. The appellants' advocate that the change of use application has no bearing on increased phosphates loading. This cannot be a tenable argument as the development has already taken place and seeks to regularise it. The change of use and the additional phosphates loading are intrinsically linked since the development facilitates that outcome, and the fact there has been an established connection does not alter the requirement to assess the impact of the development seeking planning permission and its foul drainage implications. This planning appeal seeks to regularise an unauthorised use not one which already exists as an authorised or lawful use.

## **Main Issue**

11. The main issue in this appeal is whether the development makes suitable provision for foul water drainage in a sewered area having regard to national planning policy guidance that seeks to safeguard the local environment from pollution.
12. Planning Policy Wales Edition 11 (PPW) indicates that development proposals in sewered areas must connect foul drainage to the main sewer (paragraph 6.6.20). Development proposing the use of non mains drainage schemes will only be considered acceptable where connection to the main sewer is not feasible.

## **Reasons**

13. PPW notes that the installation of private sewage treatment facilities within publicly sewered areas is not considered acceptable because of the greater risk of failures leading to pollution when compared to public sewers.
14. Welsh Government Circular 008/2018 (the Circular), which sets out the planning requirements for the use of private sewerage in new development, also reiterates that the first presumption must always be to provide a system of foul drainage discharging into a public sewer. If, by taking account of the cost and/or practicability, it can be shown a connection is not feasible, a private sewage treatment plant should be considered.
15. The appeal development is already connected to the public sewer. There is no impediment for the development to continue to be connected on costs or practicality grounds. The issue is that the continued connection is unacceptable on environmental grounds because the WWTW it connects to is failing to meet its permit requirements unless and until it is upgraded to deal with phosphate loading from the development. This is a capacity issue and not a feasibility matter and is not a cost impediment having regard to a situation where the means of connection is too far away from the WWTW concerned. This first presumption that development proposals in sewered areas must connect foul drainage to the main sewer as set out in the Circular and PPW has not been met.
16. The sequential approach for connecting to a public sewer in a sewered area is fundamental to ensuring that public health, amenity, and environmental problems are not encountered during the lifetime of the development. This is notwithstanding that connection at this present time causes other environmental issues due to factors which are largely outside the appellants' control. This does not mean that the situation would persist in perpetuity to the extent that the development could not be authorised in the future, as the circumstances pertaining to the WWTW may well be upgraded. However, this is not the current situation, and to concede on this matter would result in an unacceptable position whereby other similar developments would follow, circumventing the first presumption of connecting to a main sewer in a sewered area, leading to potentially unacceptable effects on public health, amenity, and the local environment.
17. Noting the appellants' considerable efforts in supplying the justification for the alternative options of foul drainage for the development other than to a sewer connection, these are not considered in detail since they do not overcome the main objection, I have set out above in the determining issue. Given that this issue alone is sufficient to refuse planning permission, the alternative options do not address the significant concern on compliance with policy in relation to the Circular and PPW.
18. It is noted that various options for non-sewer connection disposal of foul water drainage have been put forward, but this provides no certainty which the appellants preferred alternative for consideration might be on an application which is submitted in full. Given my conclusion on the main determining issue the implications of the alternative means of foul drainage are not for me to address. I would therefore not be undertaking a HRA in the

circumstances because the plan or project would not be given consent, permission or authorisation under Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017, given the objection I have set out on policy grounds.

19. I note the appellants' examples of other developments in the area and cases where a phosphates credit scheme is being applied. No credit scheme is applied in this area and the circumstances are not similar. No framework exists that would bring about mitigation through this method, and the absence of such an approach does not provide any degree of certainty that would resolve the concern in relation to the integrity of the SAC. I note the suggestion in the appeal reference APP/L2630/W/21/3289198 that a negatively worded condition to prevent commencement until a water efficiency calculation in accordance with the Government's National Calculation Methodology for assessing water efficiency is provided, and a mitigation package addressing the additional nutrient input arising from the development is submitted. However, no agreed methodology is in place here, and it is unclear in the cited appeal decision the full details of any agreed mitigation measures that exist to enable a negatively worded condition in relation to water neutrality to be satisfactorily discharged.
20. In this case the discussion in relation to the appropriateness of a planning condition for the disposal of foul drainage to a non-sewer connection is not material when the policy concern as identified in the main issue must first be addressed.
21. I do not have the information pertaining to the Powys Hobbit Home and Wellness Retreat development, although, I doubt that the circumstances are the same in terms of the proposed development, history of the site or the context of the development plan as to be directly comparable to the appeal development.
22. It is not within my remit in this appeal to address any alleged discharge to the river catchment this matter is not before me. I do not have the background information in relation to other cited examples to make a comparison with this appeal. It appears that if an existing property has an established connection and works relating to it do not constitute development then that would not come within the ambit of the planning process.
23. I conclude that the development does not make suitable provision for foul water drainage in a sewered area contrary to national planning policy guidance that seeks to safeguard the local environment from pollution.

### **Other matters**

24. In the preceding appeal decision, the Inspector considered the impact of the development on living conditions and the access and highway implications and concluded that neither issue merited the dismissal of the appeal. I would concur with that assessment and this appeal development is no different in detail from the previous scheme. These issues were not identified as reasons for refusal by the Council and I consider they are not main determining issues in this appeal.

### **Conclusions**

25. 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 one or more of the Welsh Ministers' well-being objectives.
26. For the reasons I have outlined and having regard to all matters raised, I conclude that the appeal is dismissed. *Iwan Llloyd* INSPECTOR