The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 03/12/18

gan Richard E. Jenkins BA (Hons) MSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 12.02.19

Appeal Decision

Site visit made on 03/12/18

by Richard E. Jenkins BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 12.02.19

Appeal Ref: APP/B6855/C/18/3210338

Site address: Land at Tircoch Isaf Farm, Llanmorlais, Swansea, SA4 3UQ

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 Matthew Rees against an enforcement notice issued by City and County of Swansea Council.
- The enforcement notice, numbered ENF16/0030, was issued on 1 August 2018.
- The breach of planning control as alleged in the notice is without planning permission, the siting of a caravan for residential purposes with the construction of an associated hardstanding, block skirting, access track and fencing and the use of associated land for residential purposes.
- The requirements of the notice are to: (i) Cease the unauthorised residential use of the land; (ii) Remove the unauthorised caravan from the site; (iii) Remove the fencing; (iv) Remove the hardstanding; (v) Remove the access track; (vi) Remove the blockwork skirting; (vii) Remove all rubble and associated material or rubbish which has occurred as a result of the actions of points (ii) to (vi) above, from the land; (viii) sow with an amenity grass seed to BS 4428, the mix should contain 70% perennial ryegrass.
- The period for compliance with the requirements is: Points (i) to (vii) – 6 months beginning on the day on which this notice takes effect; and Point (viii) – the first planting and seeding season following compliance with points (i) to (vii) above.
- The appeal is proceeding on the grounds set out in section 174(2)(a)(b)(d) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is allowed under ground (g) only. It is directed that the enforcement notice be varied by the deletion of 6 months as the period of compliance for requirements (i) to (vii) and its substitution with a 9 month period. Subject to that variation the enforcement notice is upheld and planning permission refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Reasons

2. The appeal site is located off Cilonnen Road in Llanmorlais, Swansea and comprises a parcel of land at Tircoch Isaf Farm. There is no relevant planning history at the appeal site although, following a complaint relating to the siting of a residential caravan, an enforcement notice has been issued in respect of the land, with the breach of planning control alleged described within the notice as: "*Without planning permission, the siting of a caravan for residential purposes with the construction of an associated*

hardstanding, block skirting, access track and fencing and the use of associated land for residential purposes".

The Enforcement Notice

3. The appellant contends through his written submissions that the enforcement notice lacks the necessary precision, potentially leading to implications for the arguments advanced under grounds (a), (b) and (d). Amongst other things, the appellant contends that the Local Planning Authority (LPA) has erroneously considered the structure on site as a caravan, specifically contesting that the structure comprises a dwellinghouse by virtue of its physical attachment to the ground.

4. Nevertheless, I am satisfied from the submitted evidence and the observations made at the time of my site visit that the structure represents a caravan, as defined by the Caravan Sites Act 1968. I acknowledge the fact that a concrete block plinth skirts the structure. I also acknowledge that it is connected to the ground via utility infrastructure. However, my site visit confirmed that the plinth only extended along two of the four sides of the structure and that it is clearly an ancillary addition to the overall caravan. Indeed, as with the utility connections, the block plinth could be detached without altering the structural integrity of the residential unit. Therefore, having had regard to the size and permanence of the structure, including its physical attachment to the ground, I find that the structure clearly falls within the category of a mobile or temporary unit.

5. The appellant also contends that the enforcement notice is ambiguous given that the land included within the red line of the plan attached to the enforcement notice includes agricultural structures. However, having regard to the alleged breach of planning control and the requirements of the notice, I am satisfied that the red line does not render the enforcement notice a nullity or make it invalid. Indeed, it is not so ambiguous that the appellant does not know what the alleged breach is or what the requirements of the notice are. I am therefore satisfied that there is no prejudice in this respect.

The Ground (b) Appeal

6. The appeal under ground (b) is that the breach of planning control alleged within the enforcement notice has not occurred as a matter of fact. I have set out above why I am satisfied that the alleged breach of planning control is accurate. Indeed, my site inspection confirmed that a residential caravan is stationed at the site and I was also able to confirm the presence of an associated hardstanding, concrete block skirting, access track and fencing. Residential paraphernalia located at the appeal site also supports the alleged residential use of the land.

7. I therefore find that the development has occurred as a matter of fact. Accordingly, the appeal under ground (b) must fail.

The Ground (d) Appeal

8. The appeal under ground (d) is that, at the time the enforcement notice was issued, it was too late for the LPA to take enforcement action against the matters alleged within the notice. In this respect, it is important to note that it is well-established in law that the occupation of a caravan or other such mobile unit comprises the use of land as opposed to operational development. As such, the relevant immunity period for consideration in this case is ten years, as prescribed by Section 171B(3) of the Act.

9. The appellant contends that the land has been used for the siting of a caravan for a period of time that exceeds 10 years and that the caravan currently found on site has been present for a period in excess of 4 years. Nevertheless, council tax records submitted in support of the appellant's case fall some way short of the necessary 10 years. Such records also indicate that the period of occupation since that date has not been continuous. The evidence demonstrates that an electricity connection was established at the site in 2000. A water bill dated 2005 has also been provided. However, such evidence fails to satisfactorily demonstrate a continuous residential use during the 10 years prior to the date the enforcement notice was issued, as does the submission of sporadic telephone bills covering the period between 2001- 2005.

10. A number of statements have been submitted in support of the appellant's case. However, nothing contained within those statements leads me to believe that there has been a continuous residential use between 2008 to 2018. Conversely, interested party representations opposing the development appear to corroborate the allegations submitted by the LPA. Similarly, a number of statements submitted by the appellant have been found to contradict the evidence submitted by the Council, adding further doubt as to the probability that there has been a residential caravan on site for a continuous period in excess of 10 years. Aerial photographs clearly indicate that caravans have historically been stationed on the land. However, that same evidence appears to indicate that those caravans have not always been habitable and, in the absence of any wider evidence to robustly demonstrate continuous residence, I consider that such evidence should be treated tentatively.

11. Based on the foregoing, and having considered all matters raised, I conclude that the appeal under ground (d) is not supported by sufficient evidence to demonstrate that, on the balance of probability, the land in question has been in continuous residential use for a period of 10 years or more. It follows that, at the time the enforcement notice was issued, it was not too late for the LPA to take enforcement action against the matters alleged within the notice and that the appeal under ground (d) must fail.

The Ground (a) Appeal – The Planning Merits/ Deemed Planning Application

12. The appeal site is located outside of the settlements defined by the adopted City and County of Swansea Unitary Development Plan (2008)("UDP" or "the Plan") and is therefore classified as countryside for the purposes of planning policy. Both national planning policy and adopted development plan policy generally advocate strict control within such areas. Nevertheless, as set out in the appellant's evidence, the development proposed in this case is advanced as a rural enterprise dwelling which represents an exception to the general presumption against such development in the countryside. Technical Advice Note 6: *Planning for Sustainable Rural Communities* (2010)(TAN6) sets out the most up to date expression of national policy in relation to proposals for rural enterprise dwellings. I shall consider whether the development proposed in this case would be compliant with such provisions.

13. It would appear from the evidence that the residential unit subject of the appeal would represent a second residence at Tircoch Farm. However, given that future management arrangements are not clear from the available evidence, I shall consider the proposals against the tests set out in both Section 4.4 and Section 4.5 of TAN6 in the interest of completeness. The first test of Section 4.4 is that there is a clearly established functional need for the dwelling[1]. In this case, the evidence is largely presented as an explanation of the number and type of livestock. However, this

[1] Section 4.4.1(a) of TAN6

provides little detail on the way in which the farm is managed or that the level of livestock would be likely to create a functional need above that fulfilled by any existing rural enterprise worker on site. Indeed, paragraph 4.8.1 of TAN6 states that where there are existing dwelling(s) on the enterprise then the need for additional workers to live on the site for the proper functioning of the enterprise must be demonstrated as essential.

14. The second test is that the need relates to a full-time worker, and does not relate to a part-time requirement[2]. It appears to be common ground that there is sufficient need to relate to a single full time worker. However, I have not seen anything to lead me to deviate from the Council's assessment that there is insufficient evidence to categorically justify the need for a second worker to live on site as well as the first. Further to this, the tests at Section 4.4.1(c) of TAN6 require evidence that the enterprise concerned has been established for at least three years, and has been profitable for at least one of those years, and that both the enterprise and the business need for the job is financially sound and has a clear prospect of remaining so. Only two accounting years have been submitted in this case, with little to demonstrate that the business has a reasonable prospect of continuing on a sound financial basis.

15. A number of other dwellings and potential other dwellings in the area exist and, based on the available evidence, I am not satisfied that they have been adequately discounted, despite TAN6 requiring demonstration that any functional need could not be fulfilled by another dwelling or by the conversion of an existing suitable building already on the land holding comprising the enterprise, or any other existing accommodation in the locality[3]. I recognise the on-going refurbishments, mortgages and occupational restrictions at the premises referred within the evidence. However, there is little to suggest that much has been done in an attempt to exhaust the possibility of such properties representing a suitable solution to the appellant's living arrangements. In the absence of a clear and robust assessment of whether available buildings within the area could be utilised I consider the proposal to also fail in this respect.

16. TAN6 sets out a supportive policy context for second dwellings on established farm businesses[4]. Specifically it allows a second dwelling on established farms that are financially sustainable where some of the criteria set out above cannot be satisfied. To benefit from such exceptions however, the appellant would need to have a secure and legally binding arrangement in place to demonstrate that the management of the farm business has been transferred or that the transfer of the management of the farm would be conditional upon the grant of planning permission, with the appellant needing to demonstrate majority control over the farm business. Alternatively, an existing functional need for an additional 0.5 or more of a full-time worker would need to be established and that person would obtain at least 50% of a Grade 2 Standard Worker salary from the business.

17. The proposal submitted in this case falls short of such requirements, with no evidence of any succession agreement or cogent evidence to support the need for an additional half worker to be located on site and for that worker to obtain the required salaries. In any event, paragraph 4.5.2 of TAN6 is clear that such exceptions are only applicable where the financial, other dwelling and normal planning requirement tests as set out in Section 4.4.1 of TAN6 are satisfied. I have set out above that, based on

[2] Section 4.4.1(b) of TAN6
[3] Section 4.4.1(d) of TAN6
[4] Section 4.5 of TAN6

the available evidence, the proposal fails both the financial and other dwelling tests. The development is not, therefore, justified on such grounds.

18. I note the reference within the written submissions to the potential for a temporary planning permission at the site. Indeed TAN6 states that, where the case is not completely proven, it may be appropriate for the LPA to test the evidence by granting permission for temporary accommodation for a limited period. However, as this is a retrospective case, with the evidence indicating that the appellant has lived on site for a number of years, I do not consider such an approach to be justified in this case.

19. Based on the foregoing, I conclude that the proposal represents an unjustified form of development in the countryside that, by reason of its urbanising impact, would have a detrimental impact upon the rural character of this area of the Gower Area of Outstanding Natural Beauty (AONB). Indeed, despite being partially screened from public vantage points, the domestic appearance of the structure and associated paraphernalia inevitably add visual clutter to the area and injuriously alters what is otherwise a rural setting. The development is therefore in conflict with Policies EV1, EV2, EV22 and EV26 of the adopted UDP and the advice contained within national planning policy. Indeed, such harm and policy conflict is not outweighed by the personal circumstances set out in the appellant's written submissions.

20. I have considered the fact that the dismissal of the appeal could lead to the loss of the residential unit and effectively displace its occupants. As a result, Article 8 and Article 1 of the European Convention on Human Rights incorporated into the Human Rights Act 1998 (HRA), which relate to respect for private and family life and the home, as well as the peaceful enjoyment of his/ her possessions, is engaged. The dismissal of the appeal in this case would clearly interfere with the right to respect for private and family life and for the home, and to the peaceful enjoyment of their possessions. However, such rights are qualified and interferences may be justified where they are proportionate and in the public interest. In this case, I am satisfied that such interferences would be lawful and in pursuit of a well-established and legitimate aim that includes the protection of the countryside and, more specifically, the Gower AONB. Indeed, I am satisfied that the legitimate aim of protecting such assets cannot be achieved by any other means that would have a reduced interference on such rights and, in this respect, I consider the interferences to be both proportionate and necessary.

21. For these reasons, and having considered all matters raised, I conclude that the deemed planning application arising from the appeal under ground (a) should fail.

The Ground (g) Appeal

22. The appeal under ground (g) is that the time given to comply with the requirements of the enforcement notice is too short. In this case, the enforcement notice specifies two separate periods of compliance. Specifically, requirements (i) to (vii) would need to be complied with within 6 months of the notice taking effect, whilst requirement (viii), which requires the cleared land to be seeded with an amenity grass seed, would need to be undertaken in the first planting and seeding season following compliance with requirements (i) to (vii).

23. The appellant contends that 12 months would represent a more reasonable period of time to comply with the requirements of the notice, referring specifically to the need for his family to find alternative accommodation. Moreover, the Council has confirmed through its written submissions that it would not object if the period of 6 months was substituted by a more generous period of 9 months. Having regard to the appellant's

circumstances, and in particular the interference with the rights contained within Article 8 of the European Convention on Human Rights and Article 1 of the First Protocol of the Convention, I consider that a period of 9 months would strike an appropriate balance between the competing private and public interests. I therefore consider that Section 6 of the enforcement notice should be varied to read as follows:

- *Points (i) to (vii) – 9 months beginning with the day on which the enforcement notice takes effect; and*
- *Point (viii) – The first planting and seeding season following compliance with points (i) to (vii) above.*

24. To this limited extent, the appeal under ground (g) should succeed.

Overall Conclusions

25. Based on the foregoing, and having considered all matters raised, I conclude that the appeal should be allowed under ground (g) only and that the enforcement notice should be varied by the deletion of the 6 month period for compliance with requirements (i) to (vii) of the enforcement notice and its substitution with a 9 month period for complying with the same requirements. Subject to this variation, the enforcement notice should be upheld and planning permission refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

26. In coming to the foregoing conclusions, I have considered where relevant the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (WBFG Act). I have taken into account the ways of working set out at section 5 of the WBFG Act and consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives, as required by section 8 of the WBFG Act.

Richard E. Jenkins

INSPECTOR