

Penderfyniadau ar Apêl

Gwrandawriad a gynhaliwyd ar 17/12/13
Ymweliad â safle a wnaed ar 17/12/13

gan Iwan Lloyd BA BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 2 Mai 2014

Appeal Decisions

Hearing held on 17/12/13
Site visit made on 17/12/13

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 2 May 2014

Appeal Ref: APP/Q6810/C/13/2203352

Site address: Land at Hendre Wen, Rhydyclafdy LL53 7YP

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 Arwel Bryn Parry against an enforcement notice issued by Gwynedd Council.
- The Council's reference is G13/0076.
- The notice was issued on 24 July 2013.
- The breach of planning control as alleged in the notice is without planning permission the erection of a building and change of use of land from agricultural use to use as commercial garage and MOT station together with associated car parking; formation of hard standings and installation of oil interceptor tanks.
- The requirements of the notice are to:
 - i. Cease the use of the building the approximate extent of which is shown crosshatched black on the Plan as commercial garage and MOT station;
 - ii. Cease use of the land the approximate extent is shown outlined green on the Plan for the purpose of associated car parking for the commercial garage and MOT station;
 - iii. Remove all vehicles, tools and apparatus used in connection with use of the land as commercial garage and an MOT station from the land;
 - iv. Demolish the building the approximate extent of which is shown cross hatched on the Plan and remove all resulting materials and rubble from the land;
 - v. Remove all hardstanding and interceptor tanks from the land;
 - vi. Restore the land to its condition prior to the breach in planning control taking place.
- The period for compliance with the requirements is 3 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/Q6810/A/13/2202625

Site address: Hendre Wen, Rhydyclafdy, Pwllheli LL53 7YP

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 Arwel Parry against the decision of Gwynedd Council.
- The application Ref C12/1628/33/LL, dated 14 December 2012, was refused by notice dated 21 February 2013.
- The development proposed is change of use of part of agricultural shed to garage and MOT

station, B2 class usage in order to move and expand my current business from Gallt y Beren, Rhydyclafdy.

Decisions

Appeal Ref: APP/Q6810/C/13/2203352

1. I direct that the enforcement notice be varied by the substitution of "12 months" for "3 months" as the period for compliance.
2. Subject to this variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal Ref: APP/Q6810/A/13/2202625

3. The appeal is dismissed.

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

4. The main issues in this case are whether the development is justified in the countryside having regard to the provisions of the development plan, and the effect of the development on highway safety.

Character and appearance

5. The development is located on a brow of a hill to the west of Rhydyclafdy on the south side of the B4415 at Hendre Wen. Gallt-y-Beren farm which the use was moved from is located a short distance down the road on the north side of the B4415. The appeal site is situated in the countryside outside of recognised settlement boundaries as defined in the Gwynedd Unitary Development Plan (UDP).
6. The Appellant's submission is that planning policies support the change of use of rural buildings to commercial and industrial uses in the countryside as rural enterprises and diversification schemes provide a valuable service to rural customers in the area, which is regarded as sustainable, and it also creates and sustains employment. The building was erected for agricultural purposes and there was a genuine intention to use the building for these purposes.
7. Prior approval was granted for an agricultural shed for storage purposes at Hendre Wen on 1 June 2009. The plan accompanying the application showed four bay doors on the front elevation, a blank rear and side elevation. Works commenced on the ground preparation and foundations of the building a short period after the approval was given.
8. However, in September 2009 the Appellant had to sell some 60Ha of land and livestock as the bank reclaimed a loan on the farming business. At the hearing, the Appellant indicated that the original holding was some 182Ha, but about a third was auctioned to pay back the loan. As the farm land holding was reduced the farming enterprise could no longer support the number of animals on the farm and they were also sold. This change in circumstance removed the requirement for space provided by the building. Work had stopped on the building and only the frame was in place at that time.
9. In September 2010 a planning application was submitted for the change of use of the agricultural building to a garage and MOT station. At the hearing, the Appellant clarified that the actual date of submission was 14 October 2011. The planning

officer's site visit photographs from the visit on 16 November 2011 revealed only the frame of the building was in place with no sheeting panels installed. The planning application was later withdrawn on 22 February 2012.

10. On 14 December 2012 a planning application the subject of these appeals, was submitted for change of use of agricultural shed to garage and MOT station. The Council's requisition for information reveals that the alleged use began on 7 January 2013. The proposed plans showed a small area of the building was to be used for agricultural purposes the remainder for the industrial use. The Appellant clarified at the hearing that there was no agricultural component for the building's use, and that work had progressed on the building from February 2012 to January 2013 when it was substantially completed.
11. The Appellant maintains that at the time of the prior approval there was a genuine agricultural need for the building, but circumstances changed, and planning applications were submitted for consideration for a change of use.
12. However, by the time of the submission of the planning applications there was no change of use of the building, as the Appellant's own evidence at the hearing and the response to the requisition for information testifies that the building was erected and used from the outset as a garage/MOT station. Reliance on UDP Policies D10 and C4 has limited relevance to the development as built. These deal with proposals for adapting buildings for re-use. In addition, the Appellant concedes that the intended appearance of the building granted prior approval differed from the development as built. Shutter doors in the constructed building are located in a different position from that shown on the prior approval, and new smaller windows and doors have been installed, resulting in a building with a different character to that of an agricultural building.
13. The Town and Country Planning (General Permitted Development) Order (GPDO) 1995, as amended, Schedule 2, Part 6, A.2 (2) (v) (aa) states that where prior approval is required, it shall be carried out in accordance with the details approved. Article 3(5) of the GPDO states that permission granted by Schedule 2 shall not apply if the building operations involved in the construction of that building are unlawful. I consider that reliance on the prior approval development does not apply to a building used and constructed for a commercial garage use. I therefore consider the development as a new build industrial business located in the countryside. I note the suggestion that advice was given to pursue and application for a change of use, but that informal advice is not binding on the Council to take enforcement action.
14. UDP Policy D7 permits workshops or small scale industrial business units outside development boundaries. This is provided that it can be shown that the proposed site is the most suitable location to fulfil that need. Preference in the policy is given to existing buildings being used but an exception is allowed where there are no existing suitable buildings available, and the site is physically related to an existing development boundary and adjoins an existing group of buildings or is a previously developed site. The criteria of the policy also relate to the scale of the development being appropriate, that the development includes boundary treatment, and that a dwelling is not needed to serve the development. UDP Policy C1 seeks to ensure that new development is located in a sustainable place in towns and villages and on land within development boundaries.
15. The Appellant indicates that the authorised re-use of a building as a commercial garage on the Gallt-y-Beren farm site, was too small to accommodate the needs of the

enterprise, and there was a requirement to provide additional services. MOTs were previously outsourced to a garage in Llanbedrog some 4.8km away. This was considered costly and unsustainable, due to the additional journeys created, and because the Appellant was seeking to expand to provide MOT testing for Class 7 vehicles (vehicles between 3000kg and up to an including 3500kg in gross weight). The Appellant indicates that this larger type vehicle is increasingly popular with the farming community and building trades, and require larger buildings and equipment than which was available at Gallt-y-Beren.

16. The Appellant claims that the location of the development at Hendre Wen is sustainable and has submitted the locations of his client base in the area, and provided letters in support of the development. He maintains that the development improves the diversity of the economic base in the area, and provides work for two full-time workers, and part-time administrator and cleaner (2 additional workers from the previous site). The business also provides trade and benefits to other local businesses in the area.
17. I have concluded that the development does not utilise an existing building, but is a new building facilitating the use instigated at the outset of the construction. The Appellant indicates that there were no suitable premises available in the locality. The location of Pwllheli's industrial park was discounted because the Appellant would no longer provide a local service to meet the needs of his clients. However, in looking at the client base maps provided, there is a concentration of customers in local centres such as Pwllheli, Efailnewydd, Llanbedrog and Rhydyclafdy. These locations appear to me more sustainable for the pattern and spread of clients than the appeal site, due to the concentration of potential and existing customers.
18. In my view, the Appellant has not shown sufficient evidence to persuade me that the development site is the most suitable location to fulfil the need, and that there are no existing suitable buildings available. I recognise that the existing building at Gallt-y-Beren is no longer suitable for the needs of the business, but the location of the commercial garage has no particular 'special location needs' which cannot be met on an existing designated employment/industrial site. The development is therefore contrary to UDP Policies D5, D7 and C1.
19. The site is not well located to an existing development boundary, and generally does not adjoin a group of buildings. There are existing buildings on Hendre Wen, the residential dwelling and other farm or domestic buildings, but it does not relate well to these or to the buildings at Gallt-y-Beren, since it is located on a promontory landform overlooking Rhydyclafdy and the B4415. The proposal to landscape the boundary would not overcome this objection in terms of the harm caused to the character and appearance of the area. The proposal does not protect and enhance the Landscape Conservation Area and does not respect the site and surrounding area, in conflict with UDP Policies B10 and B22.
20. I consider the proposal would fail these UDP policies and would not meet the guidance contained in Planning Policy Wales. I conclude that demand for the use could be met elsewhere where such development would cause less harm, in line with the sustainability credentials of locating development in local service centres or towns.
21. I conclude that the development is not justified in the countryside having regard to the provisions of the development plan.

Highway safety

22. The Appellant has provided speed surveys showing the 85th percentile wet weather speed, resulting in a requirement for 70m visibility either side of the access. The west side visibility requirement would result in the removal of the hedge, embankment and tree if at least 2m of the minor arm of the road junction is to be met. The required visibility to the east is achieved.
23. The land required to achieve the visibility to the west is in separate ownership. The Appellant indicates that agreement has been reached and has provided a letter from the adjoining landowner. As a result, there is a prospect that the development could provide the required visibility within the lifetime of any permission which may be given.
24. However, the works are not minor in terms of their impact. I therefore conclude that the works required to achieve the visibility would by itself have a harmful effect on the character and appearance of the area, in conflict with UDP Policy B10, which seeks to protect and enhance the Landscape Conservation Area, and is not a development which would be in keeping with the local area, as required by Policy CH33.

The appeal on ground (g)

25. The Appellant's case is that 3 months is too short a period to find alternative premises and seeks 18 months, as the period for compliance. The Appellant maintains that there is a lack of suitable premises in the area that could accommodate the business, and is concerned that the logistical problems of re-locating would cause considerable issues for the staff and the future viability of the business. The Council has indicated that it could relax the compliance period to 6 months.
26. In view of my findings on the ground (a) appeal and the planning appeal, and the circumstances of this business enterprise, a period of 12 months would allow time to find alternative accommodation, so that this could be planned and managed over the relevant period. The period of 12 months is tolerable in the interests of the public when considering the considerable burden which is placed on the Appellant.
27. To this limited extent, the appeal on ground (g) succeeds.

Conclusion

1. I have found against the development in relation to its impact on the character and appearance of the area, and the justification for the development at this location having regard to the development plan. I have had regard to the overall thrust of national and local planning policy which seeks to support economic growth and employment alongside social and environmental considerations within the context of sustainable development.
2. However, in this instance, I conclude that the benefits in terms of a contribution to economic growth, rural enterprise and employment do not outweigh the harm which is caused to the landscape character and appearance of the area, and the need to ensure new development is located in a sustainable place.
3. In this case the balance is such that permission should not be granted. For these reasons, and taking into account all matters raised, including a reported case of a similar development in Flintshire, and local representations in favour of the development, I conclude that the appeals should not succeed.

4. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application, the ground (a) appeal, and the planning appeal.

Iwan Lloyd

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr B Owen DipTP MRTPI MRICS	Appellant's agent
Mr J Bradshaw BA MSc MRTPI	Assisting the agent
Mr A Parry	Appellant
Ms S Davies	Supporting the appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Evans MSc MA	Planning Enforcement Officer
Ms M Davies BA MSc	Planning Officer
Mr G Roberts B.Eng Civ Eng	Senior Development Control Officer Transportation Unit

INTERESTED PERSON:

Cllr A Davies	County Councillor
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DOCUMENTS SUBMITTED AT THE HEARING

1. Council's notification letter
2. Two maps plotting where customers travel from to the garage.