

4. Penderfyniadau Apeliadau/Appeal Decisions

02-08-2021 - 01-09-2021

#	Cyfeirnod yr Apel / Appeal Reference	Cais / Gorfodaeth / Linked Application / Enforcement	Apeliwr / Appellant	Rhesymau dros apelio / Grounds for Appeal	Lleoliad / Location	Penderfyniad Allanol / External Decision	Dyddiad Penderfyniad Allanol / External Decision Date
1	APP/D6820 /A/21/32734 32	A200723	Mr Leon Goburn (Clarach Bay Services)	Against refusal of permission	Clarach Bay Services, Cwm Nant Yard, Capel Bangor, Aberystwyth. SY23 3LL	Dismissed	02-08-2021
2	APP/D6820 /A/21/32740 21	A200660	Mr A Clements	Against refusal of planning permission	Parc y Pant, New Quay, SA45 9SH	Dismissed	11-08-2021

5. Apeliadau a Dderbyniwyd/Appeals Received

05-08-2021 - 01-09-2021

#	Cyfeirnod yr Apel / Appeal Reference	Cais / Gorfodaeth / Linked Application / Enforcement	Apeliwr / Appellant	Rhesymau dros apelio / Grounds for Appeal	Lleoliad / Location	Penderfyniad Allanol / External Decision	Dyddiad Penderfyniad Allanol / External Decision Date
1	APP/D6820/E/21/3279670	A200719	Mr and Mrs Rushworth	Refusal of Planning Permission	Yr Hen Stablau, Devil's Bridge, Aberystwyth, SY23 3JL		
2	APP/D6820/E/21/3279670	A200718	Mr and Mrs Rushworth	Refusal of Listed Building Consent	Yr Hen Stablau, Devil's Bridge, Aberystwyth, SY23 3JL		



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 13/07/21

gan **J P Tudor, BA (Hons), Cyfreithiwr
(ddim yn ymarfer)**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 11/8/21

Appeal Decision

Site visit made on 13/07/21

by **J P Tudor, BA (Hons), Solicitor (non-
practising)**

an Inspector appointed by the Welsh Ministers

Date: 11/8/21

Appeal Ref: APP/D6820/A/21/3274021

Site address: Land at Parc y Pant, Cnwc y Lili, New Quay, Ceredigion, SA45 9SH

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 outline planning permission.
 - The appeal is made by Mr A Clements against the decision of Ceredigion County Council.
 - The application Ref: A200660 dated 5 August 2020, was refused by notice dated 3 November 2020.
 - The development proposed is erection of two new dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The proposal is in outline only with all matters reserved. A layout plan was submitted by the appellant showing a 'possible/indicative' layout. The scale parameters proposed for the dwellings are: width 12m-20m, depth 8m-16m and height 7.5m-9.5m. I have considered the appeal proposal on that basis.

Main Issues

3. The main issues are:
 - whether the proposed development would make a sufficient contribution towards the provision of affordable housing; and,
 - whether it would be in a suitable location with regard to local and national planning policy.

Reasons

4. The appeal site comprises a parcel of land used as an extended garden area of a residential property known as Parc y Pant. It is located on the edge of New Quay, but outside its settlement boundary. The site is largely grassed and set back from the road, while it is effectively screened from public view by mature hedgerow along its boundaries. It is proposed to construct two market dwellings within the site with access via an existing private shared drive off the highway.
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Affordable housing

5. Policy S05 of the Ceredigion Local Development Plan 2007-2022 (LDP) advises that LDP policies and allocations aim to secure in the region of 1100 affordable homes by seeking to negotiate a proportion of 20% affordable housing on all housing development. The policy's supporting text states that the justification for applying the requirement to all sites is set out in paragraphs 6.75-6.78 of the LDP. They explain that the requirement is based on the Local Housing Needs Assessment which informed the LDP. Policy S05 includes an option, exercisable at the discretion of the Council, for a commuted sum to be accepted in some circumstances, at the 'equivalent value' of 10% of the Open Market Value of the development as valued at the time of the application. Policy S05 appears to be broadly in accordance with guidance contained within Welsh Government's Technical Advice Note 2: Planning and Affordable Housing.
6. According to the appellant, the provision of on-site affordable housing, as preferred by policy S05, would be unviable in relation to the proposal and this particular site. That is said to be because of the generous plot sizes, with ecological and highway constraints limiting a greater density of housing that might otherwise enable an affordable housing element. Additional information regarding viability is presented by the appellant with his appeal submissions, including calculations of estimated build cost and sale prices, with a commuted sum offered as a more realistic and beneficial alternative to on-site provision. However, the Council fails to engage with or provide any assessment of that additional information, instead merely referring back to the position at the application stage, when it considered insufficient information had been provided. Its principal concern appears to remain the location of the site outside the settlement boundary, which I will consider later in this decision.
7. The appellant indicated that although no affordable housing agreement was submitted during the initial planning application, a signed agreement for consideration would be supplied during the appeal process.¹ However, no legal agreement has been received. Therefore, even if I considered that a commuted sum would be acceptable in this case, there is no means to secure it before me. I am satisfied that an appropriate s106 Agreement would meet the tests set out in Welsh Office Circular 13/97 'Planning Obligations'.
8. The Planning Inspectorate's 'Procedural Guide – Wales – Annexe 03 – Planning Obligations' advises that, in written representation cases, if the appellant wants a planning obligation to be taken into account they must make sure that it has been executed and a certified copy submitted no later than 6 weeks from the start date of the appeal.²
9. It would not be appropriate to seek to secure such an agreement by means of a planning condition.³ In the absence of a completed legal agreement, approved by the Council, I can only conclude that the proposal fails to make a sufficient contribution towards the provision of affordable housing, contrary to the requirements of LDP policy S05.

¹ Paragraph 3.4 of the appellant's Statement of Case

² Paragraphs 2.1 and 2.2

³ See paragraph 5.41 Welsh Government Circular 016/2014: 'The Use of Planning Conditions for Development Management'

Suitability of location

10. Policy S03 of the LDP forms part of the Council's strategy to direct development towards sustainable locations identified in a settlement hierarchy, which includes Rural Service Centres (RSCs) such as New Quay. Policy S03 states that focussing development in RSCs will improve the sustainability of rural areas. The policy permits housing development on allocated sites and 'windfall' sites but requires all housing development to be within defined settlement boundaries, other than rural exception sites providing affordable housing.
11. As the appeal site is outside, although adjacent to, the defined settlement boundary for New Quay and the proposal is for market dwellings, it would be contrary to LDP policy S03, which is accepted by the appellant. Notwithstanding, the appellant maintains that the site is within a highly built-up area and effectively constitutes a 'windfall' opportunity in a sustainable location.
12. The site is adjacent to the house at Parc y Pant, and proximate to a line of residential dwellings running along the eastern side of the adjacent public highway. As indicated by the appellant and confirmed by my site visit, it is otherwise largely surrounded by extensive holiday park developments of static caravans. Given the nature of the site, screened by tall hedgerow, enclosed by development and adjacent to existing housing, the proposed scheme would not result in an incursion into the countryside. Moreover, the centre of New Quay is relatively close by and could be accessed by walking, cycling or making use of the regular bus service from nearby bus stops. Therefore, there would be alternatives to private car use, a principal concern of the LDP. Overall, given its proximity to an RSC, where the LDP seeks to focus development, the proposed housing would be in a relatively sustainable location.
13. Although the Council notes those arguments advanced by the appellant, it does not persuasively explain why it considers them to be insufficient. Furthermore, it does not identify any tangible or significant harm that would result from this development outside, but immediately adjacent to, the settlement boundary.
14. The LDP explains that: '*Settlement boundaries are drawn for each of the Service Centres....to ensure that development relates to the existing built form and takes place in the most suitable locations*'.⁴ Notwithstanding the conflict with LDP policy S03 in relation to the settlement boundary, in this case, the development would relate to the existing built form, given its location next to existing housing, while its design and appearance could be controlled at the reserved matters stage. It would also be in a sustainable location adjacent to an RSC. In addition, it is material that the LDP's spatial strategy, which includes its settlement boundary criterion, does not appear to have been successful in meeting the housing provision targets for the area, with less than a year of the plan period to run.
15. Paragraph 3.60 of Planning Policy Wales (Edition 11) (PPW)⁵ states that: '*Infilling or minor extension to existing settlements may be acceptable, in particular where they meet a local need for affordable housing or it can be demonstrated that the proposal will increase local economic activity. However, new building in the open countryside away from existing settlements or areas allocated for development in development plans must continue to be strictly controlled. All new development should be of a scale and design that respects the character of the surrounding area.*'

⁴ Paragraph 6.39

⁵ February 2021

16. Although the Council appears to quote the above paragraph to support its case, in my view the development would constitute 'infilling or a minor extension' to an existing settlement. Furthermore, it would not be 'new building in the open countryside away from existing settlements or areas allocated for development', as the site is enclosed by surrounding development and is immediately next to an existing settlement, which is a focus for development in the LDP. I have dealt with the affordable housing aspect above.
17. I conclude, therefore, that the proposed development would be in a suitable location. While there would be conflict with policy S03 of the LDP, as the site is outside the settlement boundary, given the nature and context of the site and the scale of the development, the breach would not cause material harm or significantly undermine the LDP's spatial strategy.

Planning Balance and Conclusion

18. Citing figures published by the Council in December 2020⁶, the appellant notes that of the 151 housing units required for New Quay during the LDP period (2007-2022), 92 were outstanding and infers an associated under-delivery of affordable housing. The Council has not disputed those delivery shortfalls over the plan period, which has only a short time left to run. Given that context, although the proposal is limited to two dwellings, it would nevertheless make a modest contribution to the provision of housing in the area at a sustainable location. The development would also offer some economic benefits, including in the provision of short-term employment opportunities during construction and in the purchase of building materials. Future occupiers would also be likely to contribute towards the local economy and to the viability of nearby services and facilities, albeit to a relatively modest extent.
19. While I have considered the benefits and did not find that the development would be in an unsuitable location, those factors do not outweigh the significant failure to make a sufficient contribution towards the provision of affordable housing, as required by the LDP.
20. Accordingly, for the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.
21. 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 ('the Act'). I consider that this decision is in accord with the Act's sustainable development principle through its contribution towards one or more of the Welsh Minister's well-being objectives as required by section 8 of the Act.

JP Tudor

INSPECTOR

⁶ Report on LDP Housing Commitments at December 2020: Monitoring the Ceredigion Local Development Plan (LDP 2007-2022)



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 13/07/21

gan **J P Tudor, BA (Hons), Cyfreithiwr
(ddim yn ymarfer)**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 2/8/21

Appeal Decision

Site visit made on 13/07/21

by **J P Tudor, BA (Hons), Solicitor (non-
practising)**

an Inspector appointed by the Welsh Ministers

Date: 2/8/21

Appeal Ref: APP/D6820/A/21/3273432

Site address: Cwm Nant Yard, Capel Bangor, Aberystwyth, SY23 3LL

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 Leon Goburn (Clarach Bay Services Ltd.) against the decision of Ceredigion County Council.
 - The application Ref: A200723 dated 3 September 2020, was refused by notice dated 12 November 2020.
 - The development proposed is storage compound for skips and storage containers to include new vehicular access.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposed development on the character and appearance of the existing site and the area; and,
 - whether sufficient information has been submitted with regard to effects on nearby Sites of Special Scientific Interest (SSSI).

Reasons

Character and appearance

3. The appeal site comprises a reasonably sizeable parcel of greenfield land, bounded by trees and hedgerow, in a rural location. It lies just south of a country road and is opposite Cwm Nant Yard, a skip and recycling centre which has operated since the 1990s. There are some residential dwellings to the west but the site is about 1km north-west of the nearest small settlement of Capel Bangor. The surrounding area is predominantly open countryside consisting of mostly agricultural land, some wooded areas and scattered rural dwellings and farms.
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4. The appeal proposal would provide additional storage space for the existing skip and recycling business, Clarach Bay Services Ltd, which is run from Cwm Nant Yard. It would be used to store empty skips and containers. Natural screening is proposed around the site perimeter.
5. Policy DM06 of the Ceredigion Local Development Plan 2007-2022 (LDP)¹ states that development should positively contribute to its location and surroundings, while criterion 2 indicates that development should complement the site and its surroundings in terms of layout, respecting views into and out of the site and produce a cohesive form in relation to the scale, height and proportion of existing built form. Similarly, LDP policy DM17 seeks to ensure that development does not have a significant adverse impact on the qualities and special character of, amongst other things, the visual landscape of Ceredigion. According to that policy, development should not cause significant visual intrusion, be insensitively or unsympathetically sited within the landscape or fail to harmonise with the landscape.
6. Although the appeal site is opposite the existing recycling centre and some residential units, it is physically separated from them by the country road and the mature hedgerow running along its northern boundary. As the site comprises grass, scrub, scattered trees and vegetation, it has more natural affinity with adjacent fields, a fishing pond to the south-west and the wider surrounding landscape of rolling countryside than the pocket of commercial and residential development to the north. The proposed development would include a series of engineered tiered plateaus, formed with hardcore², associated embankments, a wide access from the highway and a 6m wide interior roadway and turning area running centrally through the site, with groups of stacked skips and storage containers to a height of approximately 3m. Therefore, the proposed location, form and semi-industrial use would transform the character of the existing greenfield site to its detriment and represent a significant visual intrusion into the countryside.
7. It is submitted by the appellant that various design features of the proposed scheme would reduce the impact on the rural character of the site and the area. For example, it is suggested that the plateaus have been designed to complement the natural gradient of the site. However, it seems to me that the primary function of the plateaus is to provide a level area for storage of the skips.³ Moreover, in attempting to level out the natural slope of the land, the artificially created plateaus and embankments, would appear incongruous and at odds with the undulating character of the surrounding landscape.
8. According to the appellant, existing landscaping would be retained and there would be additional planting and a green buffer and embankment to enhance screening of the site. While those efforts are noteworthy, the proposal indicates that the established hedgerow along the northern boundary would be removed. The site is already visible from parts of the road and, although the descending plateaus would be below road level, given the extent of the site the removal of the hedgerow would be likely to further expose the proposed storage compound to public views from the road and at the new wide entrance. Although the hedgerow would be replaced with a mixed species hedgerow, that and other proposed new or additional planting along boundaries and embankments is likely to take some time to establish. In any event,

¹ Adopted 25 April 2013

² Referred to as 'recycled aggregate' on the Proposed Block Plan & Proposed Cross Section (Drawing No. 2)

³ As indicated in the notes on Drawing No. 2 and within the Design and Access Statement.

the effectiveness of screening vegetation along boundaries is likely to vary at different times of the year, with many plants losing their leaves during the autumn and winter months. Moreover, the sloping nature of the topography from north to south would be likely to make parts of the terraced site visible in the landscape from both neighbouring properties and elevated parts of the surrounding rolling countryside. Therefore, while various measures within the scheme attempt to mitigate the adverse visual impact on the site and the area, I do not consider that they would be sufficient or successful.

9. Although acknowledging that the surrounding area is predominantly countryside, the appellant refers to the built form of the established recycling facility itself, along with other built development further east alongside the road comprising large, steel clad barns, other farm buildings to the west and some development at the fishing lake to the south-west. Be that as it may, most of those other developments appear to be largely agricultural buildings or barns, albeit of the modern steel-framed variety, which are fairly typical features of rural landscapes, and often associated with, and seen in the context of, established farmsteads including farmhouses and other outbuildings. In any case, those existing agricultural buildings and scattered developments would not justify the proposed noticeable visual intrusion into the countryside of semi-industrial appearance, involving new entrances, roadways and the extensive engineering and remodelling of a previously undeveloped greenfield site.
10. The appellant holds that, in terms of mass and height, the proposal does not include any permanent structures above ground level and that, therefore, any visual impact would be temporary and fully reversible. However, the proposal is for a full rather than a temporary permission and relates to a compound for skips and storage containers, to be stored in groups up to 3m high. Therefore, there would be items above ground level on site for much of the time, albeit the individual skips and containers would be removed and delivered at regular intervals. Moreover, the engineered, hardcore plateaus, embankments and central access road would be relatively permanent features in the landscape and not readily or easily reversible, without incurring likely significant costs.
11. I conclude, therefore, that the proposed development would have a significant adverse effect on the character and appearance of the existing site and the area. Consequently, of the various LDP policies referred to by the Council, the material conflict would be with policies DM06 and DM17, the relevant content of which has been set out above.

Sites of Special Scientific Interest (SSSI)

12. Although not a reason for refusal in its decision notice, within its appeal statement the Council submits that the proposal does not include sufficient information with regard to possible impacts on nearby SSSI. It advises that the Afon Ger Capel Bangor SSSI is partly designated for its river shingle invertebrate assemblage and a rare water beetle⁴, which are both sensitive to pollution. It also states that the Rheidol Shingle and Backwaters SSSI is located downstream and within 5km of the proposed development site and that the Rheidol river is connected to the site via a stream, which could offer a pathway to the protected site for pollution and for non-native and invasive species. The Council's concerns that pollution and sedimentation/silt run-off

⁴ *Bidessus minutissimus*

from the appeal site could result in significant damage to the SSSI appear to be based on similar concerns expressed by Natural Resources Wales (NRW).⁵

13. The proposal relates to the storage of 'empty' skips and containers, an aspect which could be controlled by condition. The appeal site is also some distance from the relevant SSSI. Therefore, while I have carefully considered the Council's and NRW's views⁶ and notwithstanding the possible connection pathway, I consider that the risk of pollution or other damage would be low rather than likely. While further assessment information would have been preferable, given the limited nature of the risk, I am satisfied, on this occasion, that a permission could be made subject to a suitable condition, requiring a detailed Pollution Prevention Plan to be submitted to the local planning authority for approval before any development could be commenced.
14. Therefore, I conclude that, subject to appropriate conditions, adequate information has been submitted with regard to the effect on nearby Sites of Special Scientific Interest (SSSI). On that basis, the proposed development would comply with LDP policy DM14, which indicates that development should protect biodiversity, geodiversity and ecological connectivity across Ceredigion and relevant national advice, contained in the Welsh Government's Technical Advice Note 5: Nature Conservation and Planning⁷ and Planning Policy Wales (Edition 11).

Planning Balance and Conclusion

15. The appellant focusses on part of paragraph 3.1.6 of the Welsh Government's Technical Advice Note 23 (TAN 23)⁸, which states: *'Proposals on land not identified in the plan will often come from established businesses wishing to expand or modernise... If the planning system prevents such firms from expanding or modernising in situ, significant economic benefits may be foregone.'* However, as indicated elsewhere in the appellant's submissions, that part of the paragraph is bookended by: *'Allocated sites should be given priority, but development on unallocated sites could be permitted if the resulting benefits outweigh any adverse impacts of the development.'* [and] *'Development on land not allocated in the development plan should, however, only be permitted in exceptional circumstances and must be fully justified.'* Therefore, that guidance suggests that a balancing exercise is required and development on unallocated sites should only be permitted in exceptional circumstances and where fully justified. I have also considered the content of LDP policy LU12 in this regard.
16. It is appreciated that the appellant wishes to expand the existing recycling facility to provide additional storage space. In support, the appellant also points to the contribution that the existing business makes towards environmental sustainability objectives through its recycling and waste operations. In addition, the appellant refers to the need for flexibility to expand in order to maintain a viable business and indicates that the business employs 12 people, with the suggestion that more might be employed if the site was extended.⁹ While that may be, I note that the appellant's Design and Access Statement indicates, albeit in relation to traffic, that: *'In terms of traffic generation, there will be no additional traffic along this county road. The proposal is not to develop the business and increase volumes of waste and additional employment. The proposal is to provide a new storage compound which will enable*

⁵ NRW letter dated 7 October 2020

⁶ And the relevant statutory framework including s28I of the Wildlife and Countryside Act 1981

⁷ September 2009

⁸ February 2014

⁹ Paragraph 5.10 of the appellant's Appeal Statement and section 18 of the Application Form.

*the existing recycling facilities to be improved and provide segregated zones for the storage of recycled waste allowing Clarach Bay Services to operate more efficiently.*¹⁰ Therefore, while the development may assist in the operational efficiency of the business and provide possible additional employment opportunities, the extent of those and any other economic benefits is unclear.

17. It is submitted by the appellant that it would not be realistic or viable to expand the existing operations site to the north because of issues relating to topography, site levels and the presence of a heavily wooded area. However, those assertions are not supported by any detailed or persuasive evidence in relation to cost or effects. Moreover, the appeal proposal also appears to involve relatively significant engineering operations to create plateaus on sloping land and the removal of mature hedgerow along the northern boundary. The alleged difficulties, including the distance from the existing business, associated with other possible alternative sites are also noted.
18. The proposed development would be likely to offer greater flexibility and efficiency for the existing business by providing extra storage space for skips and containers. The additional planting on the appeal site would also be of some value in enhancing ecological diversity through the mix of species. Although I found that there would not, subject to appropriate conditions, be likely harm to nearby SSSI, that is neutral in the balance. Overall however, while I have considered the benefits, I am not persuaded that they would outweigh the significant harm to the character and appearance of the existing site and the area, already identified. Therefore the proposal fails to comply with the LDP, considered as a whole.
19. Accordingly, for the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.
20. 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 ('the Act'). I consider that this decision is in accord with the Act's sustainable development principle through its contribution towards one or more of the Welsh Minister's well-being objectives as required by section 8 of the Act.

JP Tudor

INSPECTOR

¹⁰ Which the Highway Authority based its consultation response upon.