

4. Penderfyniadau Apeliadau/Appeal Decisions

06-01-2022 - 02-02-2022

#	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/21/3282488	A200828	Mr Morris	Appeal against refusal of planning permission	Felin Farm, Felin Road, Aberporth, Cardigan. SA43 2ER	Dismissed	19-01-2022
2	APP/D6820/D/21/3275666	A200404	S Gregory	Against refusal of planning permission	1 Cae Llwyni, Sarnau, Llandysul, SA44 6QQ	Dismissed	18-01-2022

5. Apeliadau a Dderbyniwyd/Appeals Received

06-01-2022 - 02-02-2022

#	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
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Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 09/09/21

gan Iwan Lloyd BA BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 18/01/2022

Appeal Decision

Site visit made on 09/09/21

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 18/01/2022

Cyf yr apêl: APP/D6820/Q/21/3275666

Cyfeiriad y safle: 1 Cae Llwyni, Sarnau, Llandysul, SA44 6QQ

Mae Gweinidogion Cymru wedi trosglwyddo'r awdurdod i benderfynu ar yr apêl hon i mi fel yr Arolygydd penodedig.

- Gwneir yr apêl o dan Adran 106B Deddf Cynllunio Gwlad a Thref 1990 yn erbyn gwrthod rhyddhau rhwymedigaeth gynllunio.
- Gwneir yr apêl gan Samantha Gregory yn erbyn y penderfyniad gan Gyngor Sir Ceredigion.
- Y datblygiad y mae'r rhwymedigaeth gynllunio yn ymwneud ag ef yw codi 2 annedd (1 fforddiadwy), cais cyfeirnod A100402. Gwnaed cais dilynol i amrywio amod 2 caniatâd cynllunio A100402 o dan gais cyfeirnod A160323 a oedd â gweithred amrywio ddyddiedig 14 Chwefror 2017.
- Gwnaed y rhwymedigaeth gynllunio, dyddiedig 15 Rhagfyr 2014, rhwng Cyngor Sir Ceredigion a Graham Leonard Tompkins, a gwnaed gweithred amrywio'r rhwymedigaeth gynllunio dyddiedig 15 Rhagfyr 2014, sy'n ddyddiedig 14 Chwefror 2017, rhwng Cyngor Sir Ceredigion a Teifi Developments Limited a Matthew David Alexander Fordham.
- Gwrthodwyd y cais, Cyf A200404, dyddiedig 20 Mai 2020, drwy hysbysiad dyddiedig 10 Rhagfyr 2020.
- Roedd y cais yn gofyn am ryddhau'r rhwymedigaeth gynllunio.

Penderfyniad

1. Gwrthodir yr apêl.

Materion rhagarweiniol a rhwymedigaethau cynllunio

2. Lleolir Rhif 1 Cae Llwyni ar ochr ddeheuol ffordd yr A487 o fewn pentref Sarnau. Mae eiddo'r apêl wedi'i leoli y tu ôl i annedd ffyrntiad sy'n wynebu ffordd yr A487 ac mae'n gyfagos i is-ffordd. Saif eiddo'r apêl o fewn datblygiad o 5 annedd ac mae wedi'i gyfyngu fel tŷ annedd fforddiadwy gyda gostyngiad wrth werthu.
3. Mae'r atodlenni i'r rhwymedigaeth, dyddiedig 15 Rhagfyr 2014, yn diffinio na ddylai annedd gyda gostyngiad wrth werthu gael ei gwaredu am bris sy'n fwy na 70% o'i gwerth ar y farchnad agored i unrhyw un nad yw'n berson cymwys. Diffinnir person cymwys fel person sy'n bodloni'r amod moddion ariannol, yr amod cysylltiad lleol, neu'r amod gweithiwr allweddol, neu'r amod gofal, ac yn yr amgylchiadau, yr amod unig breswylfa. Fel rhan o'r meini prawf, mae'n ofynnol i'r prynwr gael tystysgrif cymhwyster gan y Cyngor yn cadarnhau bod y person sy'n meddiannu'r eiddo yn berson cymwys. Mae'r apelydd wedi cael tystysgrif cymhwyster ar gyfer eiddo'r apêl hon. Ceir cyfeiriadau yn y rhwymedigaeth at sefyllfaoedd lle mae'r eiddo'n cael ei osod ar rent neu ei werthu i landlord cymdeithasol

cofrestredig gan gyfyngu ar delerau deiliadaeth a rheoli taliadau rhent drwy amod moddion ariannol.

4. Roedd y weithred amrywio ar gyfer rhwymedigaeth gynllunio 2014 yn ddyddiedig 14 Chwefror 2017. Newidiodd hyn y math o annedd i fyngalo ar y llain ynghyd â chais cynllunio perthnasol i amrywio amod 2 yng nghaniatâd cynllunio A100402. Roedd Amod 2 yn ymwneud â'r cynlluniau cymeradwy ar gyfer y caniatâd cynllunio. Mae rhwymedigaeth 2014 yn nodi y gweithredir y datblygiad yn unol â'r manylebau a'r cynlluniau a nodir yn yr atodiad. Mae gweithred amrywio 2017 yn nodi bod y perchennog a'r morgeisai yn cyfamodi i gadw a chyflawni'r cyfamodau, y cyfyngiadau a'r rhwymedigaethau sydd yn y cytundeb gwreiddiol. Mae gweithred amrywio 2017 yn nodi'r caniatâd cynllunio sy'n ymwneud â'r rhwymedigaeth ac sy'n berthnasol i olynwyr y parti a enwir yn rhwymedigaeth y weithred amrywio.
5. Mae'r rhwymedigaeth yng ngweithred amrywio 2017 yn cyfeirio'n ôl at rwymedigaeth 2014 ac mae'n rhwymo olynwyr yn y teitl i'w telerau. Mae'r cais yn gofyn am ryddhau rhwymedigaeth wreiddiol 2014. Gan fod gweithred amrywio 2017 yn rhwym i delerau rhwymedigaeth 2014, ni fyddai'n cael unrhyw effaith pe bai rhwymedigaeth 2014 yn cael ei rhyddhau.
6. Rhoddwyd caniatâd cynllunio A100402 yn ddarostyngedig i amodau, ac mae amod 2 yn cyfeirio at y gofyniad i weithredu'r caniatâd cynllunio yn unol â'r cynlluniau cymeradwy. Mae nodiadau'r caniatâd yn cyfeirio at osod tanc carthion ac y byddai hwn yn ddull derbyniol o waredu cyn belled â bod asesiad draenio boddhaol yn cael ei gynnal gan gyfeirio at Gylchlythyr 10/99 y Swyddfa Gymreig¹.
7. Roedd caniatâd cynllunio A160323 yn destun amod tebyg a oedd yn ei gwneud yn ofynnol i'r datblygiad gael ei weithredu yn unol â'r cynlluniau cymeradwy. Roedd nodyn tebyg yn cyfeirio at y tanc carthion a'r angen i sicrhau bod dull gwaredu priodol yn cael ei asesu yn unol â Chylchlythyr 10/99.

Cefndir a phrif fater

8. Mae'r ddau barti yn cyfeirio at osod carthbwl a wnaed fel modd o waredu carthion budr o eiddo'r apêl pan gafodd ei adeiladu. Gwnaed y gosodiad hwn oherwydd bod yr asesiad trylifiad ar gyfer ffos gerrig tanc carthion yn anfodddhaol. Fodd bynnag, mae'n amlwg nad oedd y Cyngor yn ymwybodol o'r newid hwn a gosodwyd y carthbwl heb awdurdod ac yn groes i'r caniatâd cynllunio perthnasol.
9. Sail achos yr apelydd dros ryddhau'r rhwymedigaeth yw bod y costau cynnal a chadw o ran gwagio'r carthbwl y tu hwnt i'r hyn y gellir ei ystyried yn rhesymol a fforddiadwy, ac felly nad yw'r eiddo bellach yn gymwys i fod yn dŷ fforddiadwy.
10. Y prif fater yw p'un ai yw'r rhwymedigaeth gynllunio yn parhau i gyflawni diben defnyddiol.

Rhesymau

11. Mae'r apelydd yn dadlau nad yw'r annedd fforddiadwy sydd â gostyngiad ar y gwerth marchnadol ar gyfer pobl gymwys sy'n cwrdd â'r meini prawf fforddiadwyedd yn bodloni'r amodau hyn bellach oherwydd y costau rhedeg chwyddedig sy'n gysylltiedig â'r annedd oherwydd costau gwagio'r carthbwl a osodwyd. Honnir y byddai person ar incwm

¹ Gofynion Cynllunio mewn perthynas â defnyddio Systemau Carthffosiaeth heb Brif Gyflenwad sy'n cynnwys Tanciau Carthion mewn Datblygiadau Newydd 1 Ebrill 1999 (y canllawiau a oedd mewn grym ar yr adeg y gwnaed y cais)

cyfyngedig yn cael trafferth rheoli baich ariannol y costau rhedeg parhaus hyn, ac felly ni fodlonir y prawf fforddiadwyedd.

12. Yn sgil cost gwagio'r carthbwl, mae'r meddianwyr yn cyfyngu ar y defnydd o ddŵr yn y cartref. Ar hyn o bryd, caiff y carthbwl ei wagio bob 2 fis ar gost o £200 am 13,000 litr. Adroddir bod gan y carthbwl ofod storio o 36,000 litr, a byddai defnydd arferol o ddŵr yn golygu y gallai costau gwagio'r carthbwl, yn ôl yr hyn a adroddir, ddyblu i £2,400 y flwyddyn.
13. Roedd yr apelydd yn ymwybodol y byddai'r eiddo yn cael ei wasanaethu gan danc carthion, a dywedwyd wrthi'n ddiweddarach gan Teifi Developments fod hyn wedi'i newid i system carthbwl. Fodd bynnag, nid oedd yr apelydd yn ymwybodol nad oedd hyn wedi'i reoleiddio drwy gael caniatâd cynllunio. Honnir y dylai'r Cyngor fod wedi sylwi ar y newid hwn yn ystod ei arolygiad o'r adeilad ar ôl ei gwblhau. Mae'r apelydd yn dadlau pe bai'r mater wedi dod i'r amlwg, byddai caniatâd ar gyfer yr eiddo fforddiadwy wedi'i wrthod, ar sail costau rhedeg chwyddedig yr eiddo mewn marchnad prynwyr gyfyngedig.
14. Cyfarfu'r apelydd â chynrychiolydd y Cyngor a'r datblygwr ond ni ddaethpwyd o hyd i ateb dichonadwy i'r broblem draenio. Mae'r apelydd o'r farn mai'r unig gasgliad a ddaeth o'r trafodaethau oedd dilyn cais i ryddhau'r rhwymedigaeth gynllunio. Dadleuir mai personau cymwys yw'r rhai sy'n bodloni'r amod moddion ariannol, ac mae ganddynt lai o incwm gwario i'w wario ar gostau rhedeg/cynnal a chadw'r cartref. Ystyrir y byddai cartrefi incwm isel yn cael eu heffeithio'n sylweddol gan gostau rhedeg yr eiddo fforddiadwy hwn â'i system ddraenio carthbwl, gan ei wneud yn gartref anfforddiadwy.
15. Cyfeiria'r apelydd at y wybodaeth a gafwyd gan y Cyngor bod nifer rhagweledig y tai fforddiadwy a ganiateir sydd â system carthbwl yn debygol o fod yn isel iawn. Mae'r apelydd yn dadlau na fyddai hyn yn unol â pholisi'r Cyngor ei hun o ran caniatáu tai fforddiadwy sy'n amhriodol o ran cymesuredd a dyluniad neu sydd wedi'u hadeiladu i safonau annerbyniol o isel². Mae'r apelydd wedi cael gwybod gan werthwr tai y byddai'n anodd gwerthu'r eiddo o ganlyniad i osod y carthbwl hwn. Pe bai eiddo'r apêl yn cael ei ddileu fel tŷ fforddiadwy, ni fyddai hyn yn cael unrhyw effaith andwyol ar darged tai fforddiadwy'r Cyngor o gyfraniad o 20% mewn perthynas â phob datblygiad tai newydd. Mae 3 chartref fforddiadwy arall yn Sarnau eisoes ac mae 2 uned ychwanegol yn cael eu hadeiladu. Mae'r apelydd yn honni bod hyn yn gymhareb o ddarpariaeth 62% o gartrefi fforddiadwy mewn cyfnod o 5 mlynedd yn Sarnau (ac eithrio eiddo'r apêl), sydd deirgwaith targed y Cyngor o 20%.
16. Mae'r apelydd wedi cynnal cyfres o brofion trylifiad i archwilio datrysiadau draenio amgen, ond ni ddangoswyd bod yr un ohonynt yn gweithio yn unol â safonau'r diwydiant. Mae'r mater wedi cael ei archwilio gyda chynrychiolwyr y Cyngor o'r Adran Rheoli Adeiladu a'r Adran Gynllunio, ac mae'r apelydd wedi cysylltu â gwahanol ddarparwyr a chyflenwyr gwaith daear a draenio. Archwiliwyd amrywiaeth o ddatrysiadau draenio, gan gynnwys dyfrhau draenio llinellol, gweithfeydd trin carthion domestig, a thwmpathau draenio wedi'u cysylltu â system bwmpio, ond mae'r rhain i gyd wedi'u gwrthod.
17. Mae'n amlwg mai'r sail ar gyfer caniatáu datblygiad ar safle'r apêl ym mhentref Sarnau oedd darparu annedd fforddiadwy fel cyfran o safle datblygu mwy o faint, yn unol â Pholisi S05 (Tai Fforddiadwy) Cynllun Datblygu Lleol Ceredigion (CDLI). Byddai Polisi S05 yn berthnasol pan wnaed cais ar gyfer y datblygiad yn 2014, ac mae'n parhau i fod yn

² Paragraff 6.180 Polisi S05 ac Atodiad 4 Cynllun Datblygu Lleol Ceredigion 2007-2022 – Mabwysiadwy yn mis Ebrill 2013

berthnasol wrth ystyried a ddylai'r rhwymedigaeth gynllunio gael ei rhyddhau. Mae tystiolaeth y Cyngor mewn perthynas â fforddiadwyedd a'r angen cymunedol am dai fforddiadwy yn parhau i fod yn gyson ag amcanion CDLI mabwysiedig y Cyngor, a Pholisi S05 yn arbennig. Nod Polisi S05 oedd darparu 1,100 o dai fforddiadwy dros gyfnod y Cynllun, ac mae hyn yn llawer llai na'r angen sy'n deillio o'r CDLI sydd yn yr Asesiad Anghenion Tai Lleol. Mae tystiolaeth y Cyngor yn dangos tangyflawniad o ran cartrefi marchnad agored a chartrefi fforddiadwy o gymharu â thargedau'r CDLI. Mae'n amlwg o gyflwyniad y Cyngor nad oes digon o gartrefi i fodloni'r angen cynyddol am dai fforddiadwy.

18. Nid wyf o'r farn y dylai'r cais i ryddhau'r rhwymedigaeth lwyddo ar sail costau gwagio'r carthbwll, lle gwnaed y gwaith anawdurdodedig hwn yn groes i'r caniatâd cynllunio a'r rhwymedigaethau cynllunio perthnasol.
19. Ni ellir cyhuddo'r Cyngor o ran y feirniadaeth nad yw eiddo'r apêl wedi cydymffurfio â safonau ansawdd adeiladu a gofynion Polisi S05 y CDLI, gan mai cyfrifoldeb y datblygwr yw hyn yn y pen draw, sydd yn ei dro yn trosglwyddo i berchennog/meddiannydd y safle i sicrhau cydymffurfedd â'r caniatâd/rhwymedigaethau perthnasol. Mae'r caniatâd cynllunio a'r rhwymedigaethau cynllunio yn trosglwyddo i olynwyr y tir. Byddai wedi bod yn fater i brynwr yr eiddo wirio'r trawsgludiad cyn prynu, lle gallai mater y carthbwll anawdurdodedig fod wedi'i ddatgelu.
20. Ar sail y dystiolaeth sydd ar gael, mae'n ymddangos nad oes llawer o obaith dod o hyd i ddatrysiad draenio amgen i'r broblem. Fodd bynnag, mater i'r Cyngor fyddai penderfynu a ddylai gymryd camau gorfodi. Ni ellir rhagdybio'n derfynol p'un ai a all y Cyngor orfodi'r datblygiad ai peidio mewn perthynas â'r apêl hon, ac ar hyn o bryd, nid yw'r mater hwn o bwys digonol i fod yn drech na'r ystyriaethau ar gyfer rhyddhau'r rhwymedigaeth gynllunio.
21. O ran fforddiadwyedd a chost gwagio'r carthbwll, pe bai safle'r apêl wedi'i leoli mewn ardal lle mae carthffosydd gerllaw, byddai'r apelydd wedi gorfod talu tâl cyfatebol i'r cwmni cyfleustodau am waredu dŵr budr fel rhan o gostau rhedeg yr eiddo. Byddai'r gyfran hon o'r costau yn gost rhedeg barhaus ar gyfer yr eiddo, boed yn annedd fforddiadwy neu'n annedd marchnad agored, er y gellid tybio y byddai'n llai na chostau presennol gwagio'r carthbwll. Yng ngoleuni hyn, nid wyf o'r farn bod cost gwagio'r carthbwll y tu hwnt i'r hyn y gellir ei ystyried yn rhesymol a fforddiadwy, o wrthbwyso'r costau yn erbyn yr hyn y gallai eraill orfod ei dalu os ydynt wedi'u cysylltu â'r system garthffosiaeth bibellau.
22. Cylchlythyr 10/99 fyddai'r canllaw perthnasol ar yr adeg y gwnaed y cais. Mae hwn yn datgan mai'r datblygwr sy'n bennaf gyfrifol am ddangos bod datblygiad newydd yn cael ei wasanaethu'n effeithiol gan system garthffosiaeth. Er ei fod hefyd yn nodi, cyn penderfynu ar gais cynllunio, mae angen i'r awdurdod cynllunio lleol fod yn fodlon bod y trefniadau carthffosiaeth yn addas. Caiff y cyngor hwn ei ailadroddiad yn iteriad diweddaraf y canllawiau³. Ymddengys na sicrhawyd bod y tanc carthion yn addas cyn cael cymeradwyaeth yn yr achos hwn.
23. Gwerthfawrogaf na fyddai gwrthod neu ganiatáu yr apêl hon yn newid problem sylfaenol mater y carthbwll yn yr eiddo hwn. Yn hyn o beth, mae'r broblem yn parhau p'un a yw'n dal i fod yn annedd fforddiadwy neu y daw'n annedd marchnad agored. Fodd bynnag, mae'r angen cymunedol am dai fforddiadwy yn parhau i fod yn ddiben cyfreithlon sy'n amlwg yn

³ Cylchlythyr Llywodraeth Cymru 008/2018 Gofynion cynllunio mewn perthynas â defnyddio systemau carthffosiaeth preifat mewn datblygiadau newydd, gan gynnwys tanciau carthion a gweithfeydd bach trin carthion, mis Gorffennaf 2018

angenrheidiol ac yn berthnasol, ac mae hyn yn dal i wneud y datblygiad yn dderbyniol o ran cynllunio.

24. Nodaf fod nifer o unedau tai fforddiadwy eraill yn yr ardal, ond caiff pob safle ei ystyried yn ôl ei rinweddau unigol yn erbyn polisiau'r cynllun datblygu. Nodaf hefyd y pwynt y gallai eiddo'r apêl fod yn anodd ei werthu, ond ni ddarparwyd unrhyw dystiolaeth ar y mater hwn o ran marchnata neu p'un a yw'r apelydd wedi ceisio gwerthu i berson cymwys arall neu i landlord cymdeithasol cofrestredig.
25. Mae'r rhwymedigaeth gynllunio yn amlwg yn berthnasol ac yn angenrheidiol o ystyried polisi cynllunio a materion y cyflenwad o dai fforddiadwy a'r galw amdanynt yn yr ardal leol. Mae'r rhwymedigaeth gynllunio yn ymwneud yn uniongyrchol â'r datblygiad ac mae'n perthyn yn deg ac yn rhesymol o ran graddfa a math i'r datblygiad oherwydd mae'n cadw tŷ fforddiadwy ar gyfer pobl sy'n gymwys ac sydd ag angen profedig am dai.
26. Deuaf i'r casgliad bod y rhwymedigaeth yn parhau i gyflawni diben defnyddiol a'i bod yn cydymffurfio â'r profion a nodir yn Rheoliadau Ardoll Seilwaith Cymunedol 2010 a'r profion yng Nghylchlythyr 13/97 ar Rwymedigaethau Cynllunio.
27. Felly, deuaf i'r casgliad bod y rhwymedigaeth yn parhau i gyflawni diben defnyddiol.
28. Wrth wneud fy mhenderfyniad, rwyf wedi ystyried gofynion adran 3 ac adran 5 Deddf Llesiant Cenedlaethau'r Dyfodol (Cymru) 2015. Ystyriaf fod y penderfyniad hwn yn unol ag egwyddor datblygu cynaliadwy'r Ddeddf trwy ei gyfraniad tuag at un neu fwy o amcanion llesiant Gweinidogion Cymru.
29. Am y rhesymau a roddir uchod, deuaf i'r casgliad y dylid gwrthod yr apêl.

Iwan Lloyd

AROLYGYDD



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 09/09/21

gan Iwan Lloyd BA BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 18/01/2022

Appeal Decision

Site visit made on 09/09/21

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 18/01/2022

Appeal Ref: APP/D6820/Q/21/3275666

Site address: 1 Cae Llwyni, Sarnau, Llandysul, SA44 6QQ

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to discharge a planning obligation.
 - The appeal is made by Samantha Gregory against the decision of Ceredigion County Council.
 - The development to which the planning obligation relates is erection of 2 dwellings (1 affordable) application reference A100402. A subsequent application for the variation of condition 2 of planning permission A100402 was made under application reference A160323 to which a deed of variation was dated 14 February 2017.
 - The planning obligations, dated 15 December 2014, was made between Cyngor Sir Ceredigion County Council and Graham Leonard Tompkins, and a deed of variation to the planning obligation dated 15 December 2014, was dated 14 February 2017 was made between Cyngor Sir Ceredigion County Council and Teifi Developments Limited and Matthew David Alexander Fordham.
 - The application Ref A200404, dated 20 May 2020, was refused by notice dated 10 December 2020.
 - The application sought to have the planning obligation discharged.
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Decision

1. The appeal is dismissed.

Preliminary matters and the planning obligations

2. No. 1 Cae Llwyni is located on the southern side of the A487 within the village of Sarnau. The appeal property is situated behind a frontage dwelling which faces onto the A487 and lies adjacent to a minor road. The appeal property is within a development of 5 dwellings and is restricted as an affordable discount for sale dwellinghouse.
3. The schedules to the obligation dated 15 December 2014 define that a discount for sale dwelling (DFS) must not be disposed at a price exceeding 70% of its open market value to anyone who is not a qualifying person. A qualifying person is defined as a person who meets the financial means condition, the local connection condition or key worker condition or care condition and in the circumstances the sole residence condition. As part of the criteria the purchaser is required to obtain a certificate of eligibility from the Council confirming that the person occupying the property is a qualifying person. The appellant has

obtained a certificate of eligibility for this appeal property. There are references in the obligation to situations where the property is rented or sold to a registered social landlord restricting the terms of occupancy and controlling rental payments by a financial means condition.

4. The deed of variation (DOV) to the 2014 planning obligation was dated 14 February 2017. This changed the dwelling type to a bungalow on the plot accompanied by a relevant planning application to vary condition 2 on planning permission A100402. Condition 2 related to the approved plans for the planning permission. The 2014 obligation states that the development is carried out in accordance with the specifications and plans specified in the annex. The 2017 DOV specifies that the owner and the mortgagee covenants to observe and perform the covenants, restrictions and obligations contained in the original agreement. The 2017 DOV identifies the planning permission to which relates to the obligation and applies to the successors of the named party of the DOV obligation.
5. The 2017 DOV obligation refers back to the 2014 obligation and binds successors in title to their terms. The application seeks to discharge the original 2014 obligation. Since the 2017 DOV is bound to the terms of the 2014 obligation it would have no effect should the 2014 obligation be discharged.
6. Planning permission A100402 was granted subject to conditions, and condition 2 refers to the requirement that the planning permission is carried out in accordance with the approved plans. The notes to the permission refers to the installation of a septic tank and that this would be an acceptable method of disposal provided that a satisfactory drainage assessment is carried out with reference to Welsh Office Circular 10/99¹.
7. Planning permission A160323 was subject to a similar condition which required the development to be carried out in accordance with the approved plans. There was a similar note referring to the septic tank and the need to ensure an appropriate method of disposal is assessed in accordance with Circular 10/99.

Background and main issue

8. Both parties refer to the installation of a cesspit which was undertaken as the means of disposal of foul sewage from the appeal property when it was constructed. This installation was undertaken because the percolation assessment for a septic tank soakaway was unsatisfactory. However, it is apparent that the Council was unaware of this change and that the cesspit installation was unauthorised and was contrary to the relevant planning permission.
9. The basis of the appellant's case to discharge the obligation is that the maintenance costs of emptying the cesspit is beyond what can be considered reasonable and affordable, and that the property therefore no longer qualifies as an affordable dwelling.
10. The main issue is whether the planning obligation continues to serve a useful purpose.

Reasons

11. The appellant contends that the affordable dwelling which is discounted from market values for qualifying persons that meet the affordability criteria no longer satisfies these conditions due to the inflated running costs associated with the dwelling because of the costs of emptying the installed cesspit. It is claimed that someone on restricted income

¹ Planning Requirement in respect of the Use of Non-Mains Sewerage incorporating Septic Tanks in New Development 1 April 1999 (the guidance then in force at the time of the application)

would struggle to manage the financial burden of these ongoing running costs and would therefore not meet the test of affordability.

12. Due to the cost of emptying the cesspit the occupants limit the use of water being used in the household. Currently, the cesspit is emptied every 2 months at a cost of £200 for 13,000 litres. The cesspit capacity is reported to be 36,000 litres, and if normal consumption of water were to be used then the costs of emptying the cesspit, it is reported, could double to £2400 annually.
13. The appellant was aware that the property would be served by a septic tank and was later told from Teifi Developments that this was changed to a cesspit system. However, the appellant was not aware that this had not been regularised by the grant of a planning permission. It is asserted that the Council should have picked-up on this change during its inspection of the build, upon completion. The appellant contends that had the issue come to light approval for the affordable property would have been refused, based on the inflated running costs of the property in a restricted buyers' market.
14. The appellant met with the Council representative and the developer but no viable solution was found to the drainage problem. The appellant considers that the only conclusion which came from the discussions was to pursue an application to discharge the planning obligation. It is argued that qualifying persons are those who meet the financial means condition have less disposable income to spend on household running/maintenance costs. It is considered that a lower income household would be significantly affected by the running costs of this affordable property serviced by a cesspit drainage system rendering it an unaffordable home.
15. The appellant refers to the information obtained from the Council that the anticipated number of affordable homes that have been granted with a cesspit system are likely to be very low. The appellant contends that this would not be within the Council's own policy of granting affordable housing which is inappropriate in terms of proportion and design or is built to unacceptably low standards². The appellant has been advised by an estate agent that it would be difficult to sell the property as result of this cesspit installation. Should the appeal property be removed as an affordable house this would have no adverse impact on the Council's affordable housing target of 20% contribution in relation to all new housing development. Sarnau already benefits from 3 other affordable homes with a further 2 additional units being built. This the appellant claims amounts to a ratio of 62% affordable homes being provided in 5 years in Sarnau (excluding the appeal property) which is three times above the Council's 20% target.
16. The appellant has undertaken a series of percolation tests to explore alternative drainage solutions but none have been shown to work in accordance with industry standards. The issue has been explored with Council representatives from the Building Control and Planning Departments and the appellant has contacted various groundwork and drainage providers and suppliers. Various drainage solutions have been explored including linear drainage irrigation, domestic package treatment plants, drainage mounds connected to a pump system, but all of these have been discounted.
17. It is apparent that the basis of allowing development on the appeal site in the village of Sarnau was to provide an affordable dwelling as a proportion of a larger development site in accordance with Policy S05 (Affordable Housing) of the Ceredigion Local Development

² Paragraph 6.180 of Policy S05 and Appendix 4 of the Ceredigion Local Development Plan 2007-2022 – Adopted April 2013

Plan (LDP). Policy S05 would have been applied when the development was sought in 2014 and continues to be relevant in considering whether the planning obligation should be discharged. The Council's evidence in relation to affordability and the community need for affordable housing remains consistent with the Council's adopted LDP objectives and in particular Policy S05. The aim of Policy S05 was to provide 1100 affordable homes over the Plan period, this is much less than the need as derived from the LDP contained in the Local Housing Needs Assessment. The Council's evidence indicates an under delivery of market and affordable homes set against LDP targets. It is apparent from the Council's submission there is an under delivery of homes to meet the growing need for affordable housing.

18. I do not consider that the submission to discharge the obligation should succeed based on the running costs of emptying a cesspit where this unauthorised work was undertaken contrary to the relevant planning permissions and planning obligations.
19. The criticism that the appeal property has not complied with building quality standards and the requirements of LDP Policy S05 cannot be levelled at the Council since it is ultimately the responsibility of the developer which in turn passes to the owner/occupier of the site to ensure compliance with the relevant permissions/obligations. Planning permission and the planning obligations passes to the successors of the land. It would have been a matter for the purchaser of the property to check the conveyancing prior to buying, whereby the issue of the unauthorised cesspit might have been revealed.
20. On the available evidence there appears to be limited scope to find an alternative drainage solution to the problem. However, it would be a matter for the Council to decide whether it should pursue enforcement action. The issue of whether the Council can enforce the development cannot be conclusively presumed in relation to this appeal and this matter at present is not of sufficient weight to outweigh the considerations for discharging the planning obligation.
21. In terms of affordability and the cost of emptying the cesspit had the appeal site been located in an area where sewers are close-by the appellant would have had to pay the utility company an equivalent charge for disposal of foul water as part of the running costs of the property. This proportion of the costs whilst presumably less than the current costs of emptying the cesspit would have been an ongoing running cost for the property regardless of whether it is an affordable dwelling or an open market dwelling. In the light of this I do not consider that the cost of emptying the cesspit is beyond what can be considered reasonable and affordable when these costs are offset by what others might have to pay if connected to the piped sewerage system.
22. Circular 10/99 would have been the relevant guidance at the time of the application. This states the responsibility for demonstrating that a new development is effectively served by a sewerage system rests primarily with the developer. Although it does also note that before deciding a planning application the local planning authority needs to be satisfied that the sewerage arrangements are suitable. This advice is carried forward in the latest iteration of the guidance³. It appears that ensuring that the septic tank was suitable prior to approval was not undertaken in this case.

³ Welsh Government Circular 008/2018 Planning requirement in respect of the use of private sewerage in new development, incorporating septic tanks and small sewage treatment plants July 2018

23. I appreciate that dismissing this appeal or allowing the appeal would not change the fundamental problem of the cesspit issue at this property. In these terms the problem persists whether it remains an affordable dwelling or an open market dwelling. However, the community need for affordable housing remains a legitimate purpose which is clearly necessary and relevant and continues to make the development acceptable in planning terms.
24. I note that there are a number of other affordable housing units in the area, but each site is considered on its individual merits set against the policies of the development plan. I also note the point that the appeal property might be difficult to sell, but no evidence has been provided on this matter in terms of marketing or whether the appellant has sought to sell to another qualifying person or registered social landlord.
25. The planning obligation is clearly relevant and necessary having regard to planning policy and issues of supply and demand of affordable housing in the locality. The planning obligation is directly related to the development and fairly and reasonably relates in scale and kind to the development because it retains an affordable dwelling to those who qualify and are in proven housing need.
26. I conclude that the obligation continues to serve a useful purpose and complies with the tests set out in The Community Infrastructure Levy Regulations 2010 and the tests in Circular 13/97 on Planning Obligations.
27. I therefore conclude that the obligation continues to serve a useful purpose.
28. 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.
29. For the reasons given above, I conclude that the appeal should be dismissed.

Iwan Lloyd

INSPECTOR



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 16 Tachwedd 2021

gan I Stevens BA (Anrh) MCD MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 19/01/2022

Appeal Decision

Site visit made on 16 November 2021

by I Stevens BA (Hons) MCD MRTPI

an Inspector appointed by the Welsh Ministers

Date: 19/01/2022

Cyf yr apêl: APP/D6820/A/21/3282488

Cyfeiriad y safle: Felin Farm, Ffordd y Felin, Aber-porth, Aberteifi, SA43 2ER

Mae Gweinidogion Cymru wedi trosglwyddo'r awdurdod i benderfynu ar yr apêl hon i mi fel yr Arolygydd penodedig.

- Gwneir yr apêl o dan adran 78 Deddf Cynllunio Gwlad a Thref 1990 yn erbyn gwrthod rhoi caniatâd cynllunio.
- Gwneir yr apêl gan Mr Jamie Morris yn erbyn y penderfyniad gan Gyngor Sir Ceredigion.
- Y datblygiad a gynigir yw codi un annedd.

Penderfyniad

1. Gwrthodir yr apêl.

Materion Gweithdrefnol

2. Mae dau gynllun gosodiad safle ychwanegol wedi'u cynnwys yn natganiad yr apelydd, fel opsiynau pellach ar gyfer datblygu safle'r apêl. Fodd bynnag, mae'r apelydd yn cydnabod y cafodd y cynlluniau hyn eu paratoi ar ôl y penderfyniad ar y cais cynllunio. Fel y cyfryw, ni phenderfynodd y Cyngor ar sail y naill na'r llall o'r cynlluniau diwygiedig, ac felly mae fy asesiad yn ymwneud â'r cynlluniau a oedd yn sail i benderfyniad y Cyngor.

Prif Faterion

3. Y prif faterion yw effaith y cynnig ar gymeriad a golwg yr ardal, a ph'un a yw'r cynnig yn gwneud darpariaeth ddigonol ar gyfer tai fforddiadwy.

Rhesymau

4. Mae safle'r apêl yn cynnwys llain o dir sydd heb ei datblygu o fewn pentref Aber-porth. Fe'i lleolir ar Ffordd y Felin, sef ardal breswyl a nodweddir gan anheddau ar wahân o arddulliau gwahanol. Mae'r anheddau ar hyd Heol y Felin wedi'u lleoli o fewn lleiniau o faint cymedrol ac wedi'u gosod yn ôl o'r briffordd ar bellteroedd amrywiol. Mae'r ffactorau hyn yn cyfrannu at gymeriad dymunol, eang ar hyd Ffordd y Felin.

5. Mae'r cynnig hwn ar gyfer annedd ar wahân wedi'i lleoli tuag at gornel ogledd-ddwyreiniol safle'r apêl, ger y terfyn â Ffordd y Felin. Nid yw'r awdurdod cynllunio lleol yn gwrthwynebu'r egwyddor o ddatblygiad preswyl ar safle'r apêl, a chytunaf â hynny.
6. Byddai'r annedd a gynigir yn wynebu Ffordd y Felin gyda gardd ar ei hochr a'r tu cefn iddi, lle mae'r tir yn gostwng yn raddol tuag at y ffin gefn â Felin Farm. Rwy'n cydnabod y byddai'r annedd a gynigir yn cael ei gosod ymlaen o fewn safle'r apêl, gan osgoi'r brif bibell garthffosiaeth sy'n rhedeg o dan y tir. Fodd bynnag, sylwais ar fy ymweliad â'r safle fod nifer o anheddau wedi'u lleoli'n agosach at Ffordd y Felin na'u terfynau cefn, tra bod anheddau eraill wedi'u lleoli'n ddwfn i mewn i'w lleiniau. I'r de yn uniongyrchol o safle'r apêl mae Nant y Felin wedi'i lleoli ymhellach ymlaen yn ei llain nag anheddau cyfagos eraill ar ochr hon y briffordd. Mewn cyferbyniad, mae Lindholme, sy'n uniongyrchol i'r gogledd o safle'r apêl, wedi'i lleoli ymhellach yn ôl yn ei llain nag anheddau cyfagos eraill. Mae cyfodiad y ddwy annedd yn dangos nad oes llinell adeiladu gyson ar hyd ochr hon Ffordd y Felin, a bod pellteroedd yn amrywio.
7. Byddai'r annedd a gynigir yn cael ei lleoli ymhellach ymlaen yn ei llain na Lindholme a Nant y Felin. Fodd bynnag, mae gosodiad y ffordd yn ffactor cyd-destunol hefyd. Mae Ffordd y Felin yn gul a cheir nifer o droeon graddol mewn ymateb i'r topograffi tonnog. Mae trefn igam-ogam i'r llinell adeiladu ar ddwy ochr Ffordd y Felin gan fod aliniad y ffordd yn amrywio. Mae Ffordd y Felin yn ffinio â therfyn dwyreiniol safle'r apêl ac yn ymestyn i gyfeiriad gogledd-ddwyreiniol o Nant y Felin. Ar ochr arall Ffordd y Felin o safle'r apêl, mae nifer o anheddau wedi'u lleoli i ddilyn cyfeiriad y briffordd yn eu llinell adeiladu. Er y byddai'r annedd a gynigir yn cael ei gosod ychydig ymhellach ymlaen yn ei llain na Nant y Felin, o ystyried aliniad y ffordd, ni fyddai wedi'i lleoli'n sylweddol ymlaen yng nghyd-destun patrwm presennol y gosodiad ar hyd y briffordd.
8. O ystyried natur eang y stryd ac amrywiadau yn y llinell adeiladu, ni fyddai lleoliad yr annedd a gynigir yn achosi unrhyw niwed i gymeriad a golwg yr ardal. Deuf i'r casgliad bod y cynnig yn cydymffurfio â Pholisi DM06 Cynllun Datblygu Lleol Ceredigion (CDLI) sydd, ymhlith materion eraill, yn ei gwneud yn ofynnol i ddatblygiad roi ystyriaeth lawn i'w leoliad a'r ardal o'i amgylch a chyfrannu'n gadarnhaol at hyn.

Tai fforddiadwy

9. Mae Polisi S05 CDLI Ceredigion yn ei gwneud yn ofynnol i gynigion ar gyfer datblygiadau tai gyfrannu at ddarparu tai fforddiadwy yn ardal yr awdurdod cynllunio lleol. Yn yr achos hwn, o ystyried bod y datblygiad a gynigir yn ymwneud ag un annedd, byddai angen cyfraniad ariannol sy'n cyfateb i 10% o werth marchnad agored y datblygiad fel y'i prisiwyd ar adeg gwneud y cais. Gwneir y cyfraniad ariannol trwy gytundeb cyfreithiol, sy'n enwi'r swm i'w dalu, fel y nodir yng Nghanllawiau Cynllunio Atodol (CCA) Tai Fforddiadwy'r Cyngor (mis Medi 2014).
10. Er fy mod yn sylweddoli na restrwyd y diffyg cyfraniad tai fforddiadwy fel rheswm dros wrthod gan yr awdurdod cynllunio lleol, mae darpariaeth tai fforddiadwy yn ystyriaeth gynllunio berthnasol ac mae'r gofyniad polisi yn sefyll. Mae Cylchlythyr Llywodraeth Cymru 016/2014 'Defnyddio Amodau Cynllunio i Reoli Datblygu' yn cynghori ei bod yn fwy priodol i ymdrin drwy rwymedigaeth gynllunio â materion fel taliadau i'r awdurdod cynllunio lleol, ac yn yr achos hwn, rwyf o'r farn bod rhwymedigaeth gynllunio yn angenrheidiol. Er bod yr apelydd wedi datgan ei fwriad i gyflwyno rhwymedigaeth gynllunio gyda'r apêl, ni roddwyd rhwymedigaeth o'r fath i mi. Felly, yn absenoldeb cytundeb rhwymol, ni fyddai'r cynnig yn gwneud darpariaeth ddigonol ar gyfer tai fforddiadwy, yn groes i Bolisi S05 y CDLI.

Materion Eraill

11. Byddai'r cynnig yn dderbyniol o safbwynt ffyrdd ac o ran effeithiau ar amodau byw meddianwyr eiddo cyfagos. Fodd bynnag, nid yw'r materion hyn yn gorbwyso'r niwed a nodwyd a'r gwrthdaro â pholisi cynllunio lleol.

Casgliad

12. Am y rhesymau a roddaf, ac ar ôl ystyried yr holl faterion a godwyd, gwrthodir yr apêl.

13. Wrth wneud fy mhenderfyniad, rwyf wedi ystyried gofynion adran 3 ac adran 5 Deddf Llesiant Cenedlaethau'r Dyfodol (Cymru) 2015. Ystyriaf fod y penderfyniad hwn yn unol ag egwyddor datblygu cynaliadwy'r Ddeddf trwy ei gyfraniad tuag at amcan llesiant Gweinidogion Cymru o wneud ein dinasoedd, ein trefi a'n pentrefi yn lleoedd gwell fyth i fyw a gweithio ynddynt.

I Stevens

Arolygydd



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 16 Tachwedd 2021

gan I Stevens BA (Hons) MCD MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 19/01/2022

Appeal Decision

Site visit made on 16 November 2021

by I Stevens BA (Hons) MCD MRTPI

an Inspector appointed by the Welsh Ministers

Date: 19/01/2022

Appeal Ref: APP/D6820/A/21/3282488

Site address: Felin Farm, Felin Road, Aberporth, Cardigan, SA43 2ER

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 Jamie Morris against the decision of Ceredigion County Council.
 - The development proposed is erection of a single dwelling.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. Two additional site layout plans have been included in the appellant's statement, as further options for developing the appeal site. However, the appellant acknowledges these plans were prepared following the determination of the planning application. As such, the Council did not make its decision based on either of the amended plans and my assessment therefore relates to the plans determined by the Council.

Main Issues

3. The main issues are the effect of the proposal on the character and appearance of the area, and whether the proposal makes adequate provision for affordable housing.

Reasons

4. The appeal site comprises an undeveloped parcel of land within the village of Aberporth. It is located along Felin Road, a residential area characterised by detached dwellings of varying styles. Dwellings along Felin Road are set within modestly sized plots and are set back from the highway to varying distances. These factors contribute to a pleasant, spacious character along Felin Road.

5. The proposal is for a detached dwelling situated towards the north-east corner of the appeal site, near to the boundary with Felin Road. The local planning authority does not object to the principle of residential development on the appeal site and I agree.
6. The proposed dwelling would face Felin Road with garden space to its side and rear, where land gradually lowers towards the rear boundary with Felin Farm. I recognise that the proposed dwelling would be set forward within the appeal site, avoiding the mains sewer pipe that runs underground. However, I observed from my site visit that several dwellings are located closer to Felin Road than their rear boundaries, whereas other dwellings are set deep into their plots. To the immediate south of the appeal site, Nant y Felin is located further forward in its plot than other nearby dwellings on this side of the highway. By contrast, Lindholme to the immediate north of the appeal site is located further back in its plot than other nearby dwellings. The juxtaposition of both dwellings demonstrates there is no consistent building line along this side of Felin Road and that distances vary.
7. The proposed dwelling would be sited further forward in its plot than both Lindholme and Nant y Felin. However, the road layout is also a contextual factor. Felin Road is narrow and has several gradual turns in response to the undulating topography. There is a stagger in the building line on both sides of Felin Road as the road alignment varies. Felin Road adjoins the eastern boundary of the appeal site and extends in a north-easterly direction from Nant y Felin. On the opposite side of Felin Road from the appeal site, several dwellings are positioned to follow the direction of the highway in their building line. While the proposed dwelling would be set slightly further forward in its plot than Nant y Felin, given the road alignment it would not be situated significantly far forward in the context of the existing layout pattern along the highway.
8. Given the spacious nature of the street and variations in the building line, the siting of the proposed dwelling would not cause harm to the character and appearance of the area. I conclude that the proposal complies with Policy DM06 of the Ceredigion Local Development Plan (LDP), which among other matters, requires development to have full regard and positively contribute to its location and surroundings.

Affordable housing

9. Policy S05 of the Ceredigion LDP requires proposals for housing development to contribute towards the provision of affordable housing in the local planning authority area. In this instance, given the proposed development is for a single dwelling, a financial contribution would be required equivalent to the value of 10% of the open market value of the development as valued at the time of the application. The financial contribution is to be made via a legal agreement, which specifies the amount to be paid, as stated in the Council's Affordable Homes Supplementary Planning Guidance (SPG) (September 2014).
10. While I appreciate the lack of affordable housing contribution was not listed as a reason for refusal by the local planning authority, the provision of affordable housing is a material planning consideration and the policy requirement remains. Welsh Government Circular 016/2014 'The Use of Planning Conditions for Development Management' advises that matters such as payments to be made to the local planning authority are more appropriately required through a planning obligation, and in this instance I consider that a planning obligation is necessary. While the appellant stated their intention to submit a planning obligation with the appeal, I have not been provided with such an obligation. In the absence of a binding agreement therefore, the proposal would not make adequate provision for affordable housing, contrary to LDP Policy S05.

Other Matters

11. The proposal would be acceptable on highways grounds and in terms of impacts on living conditions for the occupiers of neighbouring properties. However, these matters do not outweigh the harm identified and conflict with local planning policy.

Conclusion

12. For the reasons I have given, and having regard to all matters raised, the appeal is dismissed.

13. 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 to make our cities, towns and villages even better places in which to live and work

I Stevens

Inspector