



Appeal Decision

by Richard James Bsc (Hons) Msc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date 09/01/2024

Appeal reference: CAS-02696-N2Y5S7

Site address: Land off St Anne's Lane, Cwmffrwd, Carmarthen

- 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 R, H & D Jones against the decision of Carmarthenshire County Council.
 - The application Ref PL/04306, dated 30 June 2022, was refused by notice dated 28 October 2022.
 - The development proposed is described as 'Outline planning permission for up to 23 dwellings and associated works including off-site highway improvements'.
 - A site visit was made on 7 November 2023.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The planning application is made in outline, with the matter of access for consideration. Appearance, landscaping, layout and scale are reserved for future consideration. The submitted plans include information with respect to the reserved matters, which I have treated as indicative for the purposes of my consideration. I have also had regard to the submitted scale parameters which have informed my decision.

Application for Costs

3. An application for costs was made by R, H & D Jones against Carmarthenshire County Council. This application is the subject of a separate Decision.

Main Issues

4. These are the effect of the proposal on:
 - nature conservation and biodiversity interests; and
 - highway and pedestrian safety.

Reasons

5. The appeal site comprises a parcel of greenfield land, located between the residential estates of Ffrwdwen and St Anne's Avenue. It sits within Cwmffrwd's development limits and is allocated for 23 dwellings within the Carmarthenshire Local Development Plan (LDP). It is accessed from a single lane highway known as St Anne's Lane, which continues westwards to provide access to Ffrwdwen's properties, other dwellings and the

open countryside thereafter. To the east, it provides access to the St Anne's Church car park and three further dwellings (Nos. 8-10 St Anne's Lane) before linking back to the A484.

Nature conservation and biodiversity interests

6. The indicative site layout displays 23 detached dwellings, which, when combined with their curtilage boundaries and the estate road, would cover the majority of the appeal site, with a surface water attenuation area in the eastern corner. An updated Ecological Appraisal Report (dated September 2022) was submitted during the application process, along with an Amphibian and Reptile Mitigation Method Statement (ARMMS) and Marshy Grassland- Compensation, Enhancement & Monitoring Plan (MGCEMP). The Council's concerns focus on the lack of a Reptile Survey and Botanical Survey, following the Ecological Appraisal's identification of a number of habitats and resources for reptiles and moderately species-rich marshy grassland on site.
7. LDP Policy SP14 states that, amongst other matters, all development proposals should be considered with due consideration given to areas of biodiversity and nature conservation value, including protected species and habitats of acknowledged importance. LDP Policy EQ4 states that proposals for development which have an adverse impact on priority species, habitats and features of recognised principal importance to the conservation of biodiversity and nature conservation will not be permitted, except where it can be demonstrated that: a) The impacts can be satisfactorily mitigated, acceptably minimised or appropriately managed to include net enhancements; b) There are exceptional circumstances where the reasons for the development or land use change clearly outweighs the need to safeguard the biodiversity and nature conservation interests of the site and where alternative habitat provision can be made in order to maintain and enhance local biodiversity. Section 7 of the Environment (Wales) Act 2016 (EA), provides a published list of priority species and habitats which Ministers consider are of principal importance for the purpose of maintaining and enhancing biodiversity in relation to Wales.
8. These policies broadly accord with the updated Chapter 6 of Planning Policy Wales (PPW), published 18 October 2023. This provides further clarity on securing a net benefit for biodiversity through a step wise approach, by ensuring that any adverse environmental effects are firstly avoided, then minimised, mitigated and as a last resort compensated for, with on-site compensation located higher in the hierarchy than off-site compensation. It highlights the need to consider enhancement and long-term management at each step and recognises that enhancement should be proportionate to the scale and nature of the development proposed. It advises that all reasonable steps must be taken to maintain and enhance biodiversity and promote the resilience of ecosystems and that these should be balanced with the wider economic and social needs of business and local communities.
9. Technical Advice Note 5 (TAN 5) and the Council's Nature Conservation and Biodiversity supplementary planning guidance (SPG), amongst other matters, advise that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted. Planning permission should not be granted subject to a condition that protected species surveys are carried out as the permitted mitigation strategy may depend on the results of further surveys and all material considerations will not have been considered.

10. The ARMMS advises, amongst other things, a staged approach to habitat manipulation during construction. For enhancement, it recommends the creation of two reptile and amphibian refugia/hibernacula, a minimum of 2m vegetated (unmanaged grassland) buffer zone and the retention of a proportion of grassland and scrub to provide connectivity, refuge and forage for reptiles and amphibians. However, despite being based on a presumed presence of reptiles, it does not clearly demonstrate that such recommendations are the result of an assessment to first establish the true baseline extent of reptile presence on the appeal site. In concluding, the ARMMS states that reptile and amphibian numbers are likely to be low as a previous survey found no evidence of reptiles or amphibians. I do not therefore accept the appellants' contention that such assumed presence is based on a worse-case scenario and would result in the same approach towards mitigation. Neither does the ARMMS assess whether harm to such a presence could be avoided or minimised in the first instance in accordance with the step wise approach. Furthermore, it is at present unknown whether the proposed mitigation would be proportionate and effective, given the lack of a full and proper survey to establish the baseline presence. Whilst PPW advises that an assessment of the likely impact of the development on a protected species *may* be required in order to inform the development management process (my emphasis), given the 'principal importance' status of reptiles under Section 7 of the EA and their protection by the Wildlife and Countryside Act 1981, such an assessment would be necessary in this case.
11. The MGCEMP offers a compensatory site to replace the appeal site's approximate 0.3 hectares of marshy grassland, which the appellants contend would meet the Council's required 2:1 ratio of improvement. However, similar to the ARMMS, there is little evidence to demonstrate the application of a fully informed step wise approach, which in this case should firstly consider more preferable environmental options than off-site compensation, based on the findings of adequate survey work to determine the quality and extent of the grassland. I note the Council's concerns of the need to identify whether the site is species rich or not, which could drastically change the level of mitigation required for a proposal and thus, why a botanical survey is considered necessary. I place considerable weight to this concern, given the EA 'principal importance' status of species rich marshy grassland.
12. I acknowledge that the appeal proposal seeks outline permission only, however TAN5 and the SPG are clear in stating that further survey work should not be secured via a condition. Based on the submitted evidence, it is at present unclear whether the proposal would have an acceptable impact upon the nature conservation and biodiversity interests of the appeal site, following the proper application of a step wise approach.
13. The appellants refer to previous planning permissions issued in the absence of further survey work, including a previously allowed appeal (Ref: APP/M6825/A/20/3252477) for 100 dwellings in Pembrey, and application ref. PL/00851 for 20 dwellings in Llanelli. I also note the other application references provided, namely refs. PL/04824, PL/04823 and S/38285, where the appellants contend that off-site compensation was considered appropriate by the Council for the loss of Section 7 habitat. Notwithstanding the limited detail provided, since these decisions, the above-mentioned updates to PPW have clarified the application of the step wise approach, which, with respect to off-site compensation, places greater emphasis on establishing a formal baseline before habitat creations or restoration starts. There has therefore been a material change in circumstances since these previous decisions were issued. For these reasons, in combination with the established principle of considering each case on its individual merits, I place limited weight to these other decisions.

14. The Council's suggested conditions are given without prejudice to its statement of case. Whether the Council was aware of the true extent of the appeal site's potential nature conservation and biodiversity interests whilst preparing the LDP is also contested between the parties. I agree that the appeal proposal still needs to be judged against the other policies in the LDP despite its allocated status. An LDP should not, however, be submitted for examination unless the local planning authority considers the policies and allocations within it to be sound. By allocating the site in the LDP the Council determined the appeal site to be acceptable in principle for the proposed use in all respects, which is a positive consideration to this appeal. Nonetheless, given the extended time period involved between the LDP's examination and the subsequent planning application, it is necessary for the proposal to be considered on up-to-date evidence and policy with respect to its nature conservation and biodiversity interests. Such evidence would also be necessary to fully inform any required balancing exercise against wider economic and social needs.
15. I acknowledge that the Council's concerns over the original Phase 1 Report's (dated May 2020) shortcomings were not raised during the previous application's determination (Ref. PL/01879). I also acknowledge that NRW has not formally objected to the proposal based on the scope of its remit (which differs from the Council's) and that the appellants intend to carry out a Reptile Survey and Botanical Survey during the next available survey season. I also note it is contested whether the appellants could have provided the findings of these surveys within the timeframe of the application. Nevertheless, these matters do not alter my assessment of the planning merits of the case before me.
16. I find that the submitted evidence fails to enable an informed consideration of the proposed mitigation and compensatory measures and the application of the step wise approach. Neither has it been demonstrated that there are exceptional circumstances that clearly outweigh the need to safeguard the biodiversity and nature conservation interests. I therefore conclude that the proposal has not demonstrated that it would have an acceptable effect on nature conservation and biodiversity interests and it would fail to comply with LDP Policies SP14 and EQ4, PPW, TAN 5 and the SPG.

Highway safety

17. The proposal would include a new access with a widened carriageway section opposite and another across No. 10's frontage. A new pedestrian footway would link to Ffrwdwen's footway to the west and the A484's to the east.
18. During my site visit (mid-afternoon), I saw that St Anne's Lane was in light use, with slow moving traffic along a relatively straight and level section of highway past the appeal site. Although of single lane width, passing places were available towards the A484 and Ffrwdwen's residential frontage each side of the appeal site.
19. The proposal is estimated to generate around 111 total two-way vehicle movements per average weekday, representing a nearly 80% increase on the current movements, with most of those likely to arrive from and depart towards the A484. Whilst this would be a significant percentage increase from the current baseline, I note that peak movements would only comprise an additional 11 vehicle movements from 08:00 – 09:00 and 13 vehicle movements from 17:00 – 18:00. This would comprise a relatively small increase in the number of movements during the busiest times of the day. The Council contend the proposed passing place in front of No. 10 would be insufficient to enable larger vehicles to pass. However, I note from the submitted plans that a slightly narrower section passes Ffrwdwen's frontage, where vehicles regularly park. It is unclear whether the local representations that raise the difficulties of traffic obstruction, including during Church events, are also referring to Ffrwdwen's frontage. No cogent evidence has been submitted to demonstrate that this on street parking specifically poses a regular problem

for typical daily traffic, including larger agricultural vehicles and trailers. Were this the case it would likely discourage such regular parking along Ffrwdwen's frontage. I am therefore satisfied that, in providing additional widened carriageway sections, that would be wider than Ffrwdwen's frontage, the proposal would likely improve the current passing provision along this stretch of highway, despite the ATB widths cited in the submitted Technical Note. In doing so, this would shorten the distances of single carriageway widths between the site and A484. This, in combination with the low level of additional vehicle movements generated by the proposal, would be unlikely to cause an unacceptable level of congestion or disruption to the free flow of traffic along St Anne's Lane or the A484.

20. Visibility splays are provided on the submitted plans, however, the Council highlight that these are not shown to the inner edge of the carriageway, in accordance with the guidance contained within Technical Advice Note 18 (TAN 18). With the give-way markings set back from the entrance, land outside of the appellants' control would intersect the required visibility splays, with on street parking to the front of Ffrwdwen further obstructing views. However, the extent of intersection is marginal, and cars would be parked towards the end of the visibility splay, thus minimising their impact. The ability of vehicles to edge onto the straight and level carriageway from the appeal site, where visibility would quickly improve to observe typically infrequent and slow-moving traffic, would be unlikely to cause an unacceptable impact upon highway safety. I also note that, since the submission of the application, a new 20mph speed limit has been introduced past the appeal site frontage, which is slightly below the 85th percentile speeds used in calculating the required splay distances and further strengthens my view. Whilst local representations have raised concern over a subsequent increase in traffic congestion since the new speed limit, I am unclear as to why this may occur. With no further explanation available I afford this concern limited weight.
21. With respect to pedestrian safety, Planning Policy Wales (PPW) states that the planning system has an important role to play in promoting and supporting the delivery of the Active Travel Act. The aim of active travel should be to create walkable neighbourhoods, where a range of facilities are within walking distance of most residents, and the streets are safe, comfortable and enjoyable to walk and cycle. The existing residential properties to the west of the site (slightly less in number than proposed) are not currently served by any footway provision from the edge of Ffrwdwen's frontage to the A484. This is likely to discourage active travel choices for residents wishing to access Cwmffrwd's centre or use its public transport links. Those visiting the Church from the associated car park, which would sometimes include larger groups, are also required to walk along the carriageway for a short section. Similarly, Nos. 9-10 also have no direct footway link to the A484's footway. Land ownership disputes form a civil matter that holds limited weight in the consideration of the appeal proposal before me, however the appellants have provided evidence to indicate that such matters would not render the improvements undeliverable. As such, with the inclusion of the proposed highway improvements including the new footway, which could be secured via a Grampian style condition, the proposal would offer a marked improvement for existing residents, school children and Church goers, to which I afford considerable weight. Llandyfaelog Community Council's stated consistent requests for a pavement from St Anne's junction to the houses in this area further substantiates this likely benefit of the proposal.
22. In terms of pedestrian volume, the proposal is estimated to generate an additional 4 movements between 8:00-9:00 and 3 between 17:00 and 18:00, with an additional 2 cyclist movements daily. Even when combined with similar expected levels from the existing residents to the west, this would remain a minimal number of movements during peak hours, with additional movements spread throughout the remaining day. I have had

regard to the Welsh Government's Active Travel Act Guidance and the Manual for Streets guidance documents. The proposed 1.2m section would be below the absolute minimum of 1.5m as advised within the Active Travel Act Guidance. However, in considering the merits of the proposal, the proposed footway would likely enable the single file passing for the majority of oncoming pedestrians. Where this would not be possible, for example with oncoming wheelchair or ambulant users, the good forward visibility along a relatively straight and level footway and the availability of wider footway sections at each end, would enable suitable anticipation and, if required, for pedestrians to wait for a short period of time, to allow others to pass on the wider sections. This would similarly apply if a need arose to wait for abnormally larger vehicles to pass. This provision would likely avoid a common need to step onto the carriageway. Furthermore, the slow-moving speeds and good forward visibility of drivers would enable early awareness of any pedestrians on the narrower sections of the footway. As such and taking the above identified benefits to existing residents and Church goes into consideration, the proposal would be acceptable on pedestrian safety grounds.

23. The Council refers to the LDP's nominal housing allocation densities as being reflective of site-specific circumstances. The appeal site's allocation within the adopted LDP, which has been subjected to an examination for soundness, is as stated, a positive consideration of the appeal proposal. Furthermore, based on the proposal's specific merits, I have found it to be acceptable on highway safety grounds. These matters would not, therefore, be outweighed by the site's omission from the Council's 2nd Deposit LDP for the plan period 2018-2033.
24. For these reasons I conclude that sufficient information has been submitted to demonstrate the proposal would not be harmful to highway or pedestrian safety and would comply with LDP Policies GP1 and TR3, which amongst other matters, state that proposals will be permitted where an appropriate access can be provided which does not give rise to any highway safety concerns within the locality and which do not generate unacceptable levels of traffic on the surrounding road network.

Other Matters

25. The LDP requires a contribution to affordable housing on all housing allocations, and where necessary seeks developers to enter into Planning Obligations to secure contributions to fund improvements to community facilities and other services to meet requirements arising from new developments. In this regard the appellants have provided a signed Unilateral Undertaking (UU), a mechanism which the Council finds acceptable as a means of securing the required contributions. The Council has also agreed to securing open space provision via a suggested planning condition. Whilst it has not confirmed its acceptance of the submitted UU, this undertaking nevertheless demonstrates a clear intention from the appellants to provide the required contributions. As such, I am satisfied that the provision of affordable housing and other community facilities does not form a determinative issue, and as the appeal is being dismissed on other grounds, I have not progressed this matter further.
26. I have had regard to the local representations objecting to the proposal, which raise concerns over surface water and sewage drainage capacity, the loss of privacy and light, an increase in noise disturbance from construction and increased numbers of residents, radon gas and flooding. However, having considered the merits of the proposal, no cogent evidence has been submitted to indicate it would be unacceptable for these reasons.

Conclusion

27. I have found that the proposal would not be harmful to highway safety and would comply with the relevant development plan policies in that regard. However, the proposal would conflict with national and local planning policies relating to nature conservation and biodiversity interests. I attach substantial weight to this harm, which would not be outweighed by any benefits arising from the scheme, including highway safety improvements and housing delivery. For the reasons given above and having regard to all other matters raised, I conclude that the appeal is dismissed.

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.

Richard James

INSPECTOR