



Penderfyniad ar yr Apêl

Appeal Decision

Ymweliad â safle a wnaed ar 12/10/11

Site visit made on 12/10/11

gan **G P Thomas BA(Hons) DMS MRTPI**
Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 13/12/11

by **G P Thomas BA(Hons) DMS MRTPI**
an Inspector appointed by the Welsh Ministers
Date: 13/12/11

Appeal Ref: APP/E6840/A/11/2158003

Site address: May Hill Wharf, Wyesham Road, Monmouth NP25 3LX

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 M F Freeman against the decision of Monmouthshire County Council.
 - The application Ref DC/2009/00117, dated 26 January 2009, was refused by notice dated 3 February 2011.
 - The development proposed is: *Redevelopment of existing site for a 883sqm bulky goods retail unit, car parking and landscaping.*
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Decision

1. The appeal is dismissed.

Main Issue

2. The effect the proposal would have on highway and pedestrian safety and the free flow of traffic on Wyesham Road arising from the proposed access arrangements; and the consequences associated with the development's location within the floodplain.

Reasons

3. The appeal relates to a vacant area of land which has accommodated a builder's yard and a car repair business. The scattering of buildings on the site are in poor repair or derelict. There is a recently built Lidl food store on adjoining land to the west; residential development on the opposite side of Wyesham Road to the east; housing to the south; and, a property that is split into two separate dwellings to the north.
4. The application was first reported to the planning committee on 20 November 2010. The officer's report indicated that the site is within the Monmouth development boundary but is not allocated for any specific purpose in the Monmouthshire Unitary Development Plan [UDP]. The retail impact had been assessed and in retail policy terms the proposal was considered acceptable. The recommendation was to grant planning permission, subject to a number of planning conditions.

Highway and Pedestrian Safety

5. Two sub-standard accesses serve the site at present. One of these would be retained to provide access to a domestic garage. The other would be closed and replaced with a new entrance off Wyesham Road. This would serve the proposed retail unit and retain existing access rights to two dwellings to the south. The proposal had been

considered by the Council's Highway Section and the traffic assessment had been examined by an independent consultant. Subject to issues relating to internal arrangements which had been agreed with the developer and details of retaining walls being required by condition, the officer's report indicated there were no highway objections. The report concluded that the Highway Engineer had no grounds for objection.

6. The planning committee expressed concerns with regard to the proposed access from the outset. The planning committees deferred the matter on a number of occasions between November 2010 and February 2011. However, the officer's conclusion on highway matters remained unchanged at all the meetings. I note that the committee that resolved to refuse the application was informed that the application was acceptable to highway officers in terms of existing traffic conditions.
7. A planning authority is not bound to adopt the professional or technical advice given by their officers. However, they will be expected to show they had reasonable planning grounds for taking a decision contrary to that advice and produce relevant evidence to support the decision.
8. The Council's appeal submissions acknowledge that the proposed access would provide improvements by; the removal of the existing sub-standard access onto Staunton Road (A4136) reducing both vehicular and pedestrian conflicts; improving the visibility at the junction of Wyesham Road/Staunton Road roundabout following removal of adjacent buildings; and, widening the footway provision along Wyesham Road over the frontage of the development.
9. The Council argues that pedestrian safety would be compromised because pedestrians will be expected to cross the new access and all vehicles will have to wait to turn right into the development causing an obstruction and delays to other vehicles. Both of these scenarios are commonplace and no evidence has been submitted to substantiate the reason why these are considered unacceptable in this instance. The proposed junction visibility would meet national guidance set out in Technical Advice Note 18: 'Transport', and drivers and pedestrians would have adequate sight of each other. I consider the benefits associated with the widening of the footway outweigh the fact that the children walking to and from school would have to cross the proposed access road.
10. It is also argued that on-street parking on Wyesham Road may be lost. However, nobody has the right to park on the highway. I consider this objection does not justify refusing the proposal. The Council asserts that the increased traffic generated by the proposal will exacerbate existing congestion at peak times on Wyesham Road causing further congestion and extend journey times at peak periods. The results of traffic surveys carried out in November 2008 were submitted to the Council indicating that Wyesham Road was lightly trafficked and could accommodate the additional traffic that would be generated by this proposal. These findings were accepted by the Council and it has submitted no evidence to indicate that the traffic levels have changed significantly or why it considers the situation is now unacceptable.
11. Officers of the highway authority would have been aware of the road and traffic conditions in the vicinity of the site when they considered the application and indicated there no highway objections. However, the Council has failed to provide substantive evidence to justify the reasons for refusing the application.

12. For the above reasons I conclude that the proposal would not be detrimental to highway and pedestrian safety or the free flow of traffic on Wyesham Road.

Floodplain

13. Environment Agency Wales [EAW] has submitted representation objecting to the proposal. Although the Council did not refuse the application for reasons associated with flooding, I have to consider the proposal in the light of the EAW submissions and Technical Advice Note 15 'Development and Flood Risk' [TAN15].
14. The officer report to the planning committee indicated that, in response to consultation, EAW had objected to the proposal since it was within a zone C2 flood plain and the site was at risk of flooding. The report concluded that conditions would need to be attached to address EAWs concerns. Members responded that "it was unnecessary to add a further condition as the site was roughly 30 feet above the river and was considered to not be subject to flooding"¹. However, EAW had indicated that, on the basis of the information that accompanied the planning application, the car park would flood to a maximum depth of 1.3m during a 1 in 100 (1%) year plus climate change flood event and to a maximum depth of 2.57m during a 1 in 1000 years (0.1%) extreme flood event. I do not consider the reason put forward by the Council is sufficient to justify the view that the site was not subject to flooding.
15. The site is partly within a zone C2 on the development advice map. These are areas of the floodplain without significant flood defence infrastructure. However, the appellant considers the site should be classed as zone C1 (areas served by significant infrastructure including flood defences). The appellant has not provided compelling evidence to support this assertion. EAW update the flood map information on a quarterly basis and I note that their submission is dated 4 October 2011. In the absence of compelling evidence to the contrary I have no reason to take the view that the development advice map is not up to date or to question the validity of the EAW advice. I have determined the appeal on the basis that the site is partly within zone C2.
16. In zone C2 only less vulnerable development, which includes retail development and car parks, should be considered. A balanced judgement is required to enable the risks of flooding to be addressed whilst recognising the benefits of reusing previously developed land. TAN15 requires that development should only be permitted within zones C1 or C2 if it is determined that it is justified in that location. Development will only be justified if it can be demonstrated that the location satisfies the tests set out in TAN15 para 6.2. No evidence has been put forward by either the Council or the appellant indicating that the development is necessary to assist, or be part of a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement (test criterion i.) or that it is necessary to contribute to key employment objectives supported by the local authority and other key partners to sustain an existing settlement (test criterion ii).
17. Whilst the officer report indicated that the proposal was in accordance with Policy ENV9 (Development on Flood Plains) of the UDP, it did not address these tests. The Council was entitled to come to that conclusion with regard to the UDP policy but it is necessary to also have regard to the TAN15 tests. The susceptibility of land to flooding is a material consideration and TAN15 requires a proposal to satisfy either

¹ Minutes of the planning committee dated 16 November 2010

test criterion i. or ii. As I have indicated above this proposal meets neither of these tests.

18. EAW argue that the proposal has failed to demonstrate that the risks and consequences associated with flooding can be acceptably managed. EAW indicate that whilst the finished floor level of the proposed building would be above the 0.1% flood level this would result in a corresponding loss of flood storage. The appellant argues that this would be a negligible loss of storage and would have little impact on the overall flood outline. However, this argument can be repeated too often and does not take account of the incremental impact of such scenarios.
19. The appellant does not accept the maximum velocity flow rates predicted by EAW and argues that the surrounding buildings and other unspecified constraints would reduce the velocities. However, no alternative velocity flow rates are put forward. On the evidence that is before me I am satisfied that the depth of flooding and the velocity of flood waters would exceed the tolerable conditions given in TAN15². Whilst those figures are indicative I consider the differences between those figures and the situation that is before me to be significant.
20. I do not consider the appellant's argument that the depth of flooding in a 1% event would be considerably less than the adjacent Lidl site, where the entire footprint of the site including the building, would be flooded, is sufficient reason to justify this proposal. Each proposal is considered on its own merits and I do not consider that the Lidl development establishes a precedent that must be followed in this appeal.
21. On balance I am not convinced that the consequences associated with flooding would be acceptable.
22. I accept that the flooding would be restricted to the car park and the likely rate of inundation would allow for safe evacuation in flooding events and a safe and dry escape route would be available from the development. Whilst these factors mean there is less risk of personal injury I do not consider it removes the risks associated with flooding sufficiently bearing in mind the depth and velocity of the floodwater and the need for a precautionary approach to development in areas at high risk of flooding.
23. Whilst I have found in favour of the appellant on some of these matters, the development fails to pass the first hurdle of the justification test (criteria i. or ii). This is not a matter that could be overcome by imposing conditions and in these circumstances I conclude that the proposal would be contrary to TAN 15.
24. Whilst I have concluded that the proposal would not be detrimental to highway and pedestrian safety and the free flow of traffic, this is not sufficient to overcome the objection I have identified with regard to TAN15.
25. For the above reasons and having considered all other matters I conclude that the appeal fails.

Gwynedd P Thomas

Inspector

² TAN15 A1.15

