

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 20/02/2018

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DipTP DipMan MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 03/07/18

Appeal Decision

Site visit made on 20/02/2018

by Declan Beggan BSc (Hons) MSc DipTP
DipMan MRTPI

an Inspector appointed by the Welsh Ministers

Date: 03/07/18

Appeal Ref: APP/E6840/C/17/3187660

Site address: Ridge House Stables, Earlswood, Chepstow, Monmouthshire, NP16 6AN

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

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
- The appeal is made by Mr Ronald Harris against an enforcement notice (EN) issued by Monmouthshire County Council.
- The Council's reference is E12/069.
- The notice was issued on 27 September 2017.
- The breach of planning control as alleged in the notice is 'Non-compliance with condition 1 imposed on planning permission DC/2013/00128'.
- The development to which the permission relates is: *'The retention of one steel framed barn building, roof to be cladded to be concrete panelled. The barn building is to be used for the stabling of horses which is the same use as the existing barn buildings'*. The condition in question is No. 1 which states that: *'The waste management/location of disposal of storage of waste from the equestrian enterprise at the site shall be agreed with the Local Planning Authority within two months of the date of this permission. No waste shall be deposited or stored on the site other than in the location approved by the LPA. Any existing waste stockpile shall be removed and stored in the approved location within two months of the date the LPA approved the location of the waste storage area.'* The notice alleges that the condition has not been complied with in that no approved location for the stockpile has been agreed by the LPA.
- The requirements of the notice are to 'cease the deposit and storage of waste on the land'.
- The period for compliance with the requirements is 1 calendar month from the date the EN takes effect.
- The appeal is proceeding on the grounds set out in section 174(2), (a), (c), (d), (f) & (g) of the Act. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under Section 177(5) of the Act falls to be considered.

Decision

1. I direct that condition 1 attached to planning permission DC/2013/00128 be deleted and replaced with a new condition 1 as follows:
 1. The waste generated from the equestrian activity on the site shall only be stored in its current location.
2. The EN is quashed, the appeal succeeds insofar that planning permission is granted on the application deemed to have been made under section 177(5) of the Act for

development already carried out, namely the *'The retention of one steel framed barn building, roof to be cladded to be concrete panelled. The barn building is to be used for the stabling of horses which is the same use as the existing barn buildings'* at 'Ridge House Stables, Chepstow, Monmouthshire, NP16 6AN' without complying with condition 1 of planning permission Ref. DC/2013/00128 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and subject to a new condition as indicated above.

Application for Costs

3. The Appellant has submitted a written application for costs against the Council. This application is the subject of a separate decision.

Procedural Matters

4. The appellant has submitted that the EN contains a number of technical flaws and is therefore a nullity. An enforcement notice is a nullity if it is missing some vital element, such as its requirements, and so is defective on its face.
5. The appellant advances a number of arguments in terms of the EN being a nullity, namely, perceived flaws with the specified condition and the requirements contained within the notice, and his view that the EN is unclear in terms of the alleged breach as it fails to identify the location of the stated 'waste' pile. In terms of the first two points raised these are matters that can be addressed in the grounds of appeal that have been advanced and are not therefore matters to be considered in terms of the EN being a nullity. In terms of the issue regarding the identification of the 'waste' pile, the notice quite properly addresses the whole site as the condition was related to the whole site. In addition the Regulations¹ simply require that the precise boundaries of the land to which the notice relates be identified; the EN achieves this by providing a sensible indication of the land in question. The EN does not have to precisely identify the exact spot where the waste pile is found, however in any event there is no injustice as the recipient of the EN is fully aware of the waste pile in question.
6. Section 173 of the Act indicates a number of matters that an EN is required to state and a failure to meet those requirements is likely to result in the EN being a nullity. In summary these requirements refer to identification of the matters constituting the breach of planning control, specifying the steps required for compliance, a date when the EN takes effect and the period for compliance; the EN meets all the requirements of section 173 of the Act and therefore at face value cannot be considered to be a nullity or defective. Overall I conclude that when considered at 'face value' and in light of the Act and the Regulations the EN cannot be considered to be a nullity.

The appeal on ground (c)

7. The appeal on ground (c) is that there has been not been a breach of planning control. The appellant argues that as the horse manure that makes up the stockpile on the site is used to fertilise land within his ownership, it cannot be considered to constitute waste and is therefore not development since it is an ancillary use of the land in relation to its main use; in support of this stance the appellant refers to government guidance² which states that horse manure is not considered waste if, inter alia, it is

¹ The Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2017

² 'Keeping Horses on Farms' as published by the Department for Environment, Food & Rural Affairs

used as soil fertiliser. This argument does not assist the appellant in his ground (c) appeal; the substance of many issues central to conditions attached to a planning permission could be deemed to not constitute development and in this case the condition clearly sought to control matters related to the waste produced, whether or not it is development is irrelevant in terms of it being referred to in a planning condition.

8. The condition subject to the EN was imposed on a retrospective planning permission for further stabling which would increase the amount of manure tipped and stored on the overall site and was required to address concerns relating to odour and visual amenity. Notwithstanding the above arguments advanced by the appellant, the fact of the matter is the planning condition central to this appeal has not been discharged or complied with despite the permission itself having been implemented; a breach of condition has occurred as a matter of fact and therefore the appeal under ground (c) must fail.

The appeal on ground (d)

9. The appeal on ground (d) is that at the date the EN was issued no enforcement action could be taken in respect of any breach of planning control as alleged in the notice. The appellant maintains that the alleged breach i.e. the use of the land for waste storage occurred more than 10 years ago with aerial photographs substantiating this claim; I disagree. The submitted aerial photograph from 2004 even when magnified to a significant degree does not support the appellant's view that the area was used for the storage of waste; the image is blurred in nature and adds little to support the appellant's contention, and to my mind would reinforce the Council's view that the area was no more than a copse of trees. Further later aerial imagery provides little more illumination on the matter, although I accept the images from 2009 & 2014 do appear to indicate a mass that is akin to the current waste pile on the appeal site.
10. There is no substantive evidence that the use of the land for waste storage occurred more than 10 years ago, however even if it did, as a matter of fact within the last 10 years a planning application was submitted that required the details of waste storage generated by the development to be submitted for the approval of the local planning authority; such details have not been submitted and therefore the Council were well within their rights to pursue enforcement action. The appeal on ground (d) therefore fails.

The appeal on ground (a) and the deemed application

11. The appeal on ground (a) is that the condition referred to in the EN should be removed. No specific planning policy for imposing the condition was referred to on the decision notice that accompanied Ref. DC/2013/00128, however the EN refers to policy EP1 of the adopted Monmouthshire Local Development Plan (LDP); that policy is entitled 'Amenity and Environmental Protection' and states, inter alia, that development should have regard to the privacy, amenity and health of occupiers of neighbouring properties and further states development proposals that would cause or result in an unacceptable risk/harm to local amenity, health, the character/quality of the countryside or the landscape will not be permitted.
12. The appellant argues the condition does not meet the tests for conditions set out in Circular 16/14: *The Use of Planning Conditions for Development Management*. The

Courts have laid down general criteria for the validity of planning conditions³; these are replicated in Circular 16/14. There are six tests that a planning condition must adhere to and all must be satisfied; the tests relate to a condition being necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. Whilst the appellant draws attention to the 'six tests', nevertheless the thrust of his ground (a) appeal is that the current location of the waste pile is acceptable in visual and residential amenity terms and is policy compliant, and therefore the disputed condition is not necessary, nor reasonable. The condition sought submission and approval of details for the storage of waste generated by the equestrian activities on the site to safeguard the adjacent residential amenities, and the character and appearance of the wider area. Whilst I note concerns over the precision of the condition, nevertheless, I find it does govern on-going storage of waste on the site; the condition has effect and is enforceable.

13. I consider the main issue before me on this ground (a) appeal is, given the presence of the waste pile in its current location, whether the condition referred to in the EN is necessary with particular regard to the effect of the existing waste pile on the character and appearance of the area, and on the living conditions of occupiers of Larkfield Cottage.

Character and Appearance

14. The waste pile is a relatively visually discreet feature set within a gently rolling landscape of trees and hedges which provide for significant levels of screening, however even when glimpsed from certain vantage points it appears as feature that would not appear out of place in a rural setting. Therefore in terms of policy EP1 of the LDP, the current siting of the waste pile would have no material detrimental impact on the character and appearance, or quality of the countryside or landscape.

Residential Amenity

15. The Council supported by third parties state that the waste pile would be unduly prominent when viewed from Larkfield Cottage. Nonetheless the primary elevations to Larkfield Cottage do not face directly onto the pile, and when this is combined with the significant distance the property is sited away from the pile at some 124 metres, and the fact that it benefits from the substantial screening effects of existing boundary vegetation which generally restrict views even further, then to my mind there is no significant detrimental visual impact on the amenities enjoyed by occupants of the property as a result of the current siting of the waste pile.
16. Third parties, supported by the Council refer to the detrimental impact on residential amenity due to odour caused by the current waste pile. Third parties maintain that odour from the waste pile is particularly evident during the warmer summer months. I appreciate my site visit was not during the summer months, nonetheless, it was a relatively warm late winter's day and I did not detect any discernible odour, either in close proximity to the pile or much further away on the boundary adjacent to Larkfield Cottage, although I do accept this may not be the case in the summer when odour may be more noticeable. The fact of the matter is that rural living brings with it a high likelihood of activities and odours that the majority of the population would not experience, such as odours related to agricultural or equestrian activities. Bearing in

³ Refer to *Newbury DC v SoS for the Environment* (1981) A.C. 578; *Brent London Borough Council v SoS for the Environment* (1988) JPL 222, & *MJ Shanley Ltd v SoS for the Environment* (1982) JPL 380

mind the significant distance the nearest dwelling is located to the waste pile, on balance, I do not consider there is likely to be any significant harm to occupants of that property in terms of odour over and above what would normally be expected in a rural location; in this respect I therefore see no conflict with policy EP1 of the LDP.

17. The Council accept that odour problems associated with the site do not constitute a statutory nuisance; I agree with the appellant that should any such nuisance arise in the future then separate controls outside of the planning regime should be able to resolve the matter.
18. Third parties refer to harm to drinking water supplies through ground contamination and to general health and well-being of neighbours due micro particles of waste that may be carried in the wind, however there is no substantive evidence that such harm has occurred.

Conclusions on the Ground (a) appeal

19. The purpose of the condition in the original planning permission to control the storage of waste was reasonable and necessary, however given that the current location in which it is sited is acceptable, the wording of the condition no longer serves a useful purpose and therefore is unnecessary; however a revised condition is necessary. The revised condition seeks to safeguard the residential amenities of the adjacent Larkfield Cottage, and to this end I will replace the deleted condition with a new condition that requires the waste pile to be retained in its current location.
20. A third party has suggested an alternative wording of the original planning condition, however as I have found the current location of the waste to be acceptable and that condition 1 no longer serves a useful purpose, it follows the suggested alternative wording of the condition is not necessary.

Overall Conclusions

21. Having regard to the above and all other matters raised, the appeal is allowed, the EN is quashed, and planning permission is granted on the application deemed to have been made under section 177 (5) of the Act.
22. In the light of my findings above it is not necessary to consider the appeal against the EN on grounds (f) & (g).
23. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WBFG Act.

Declan Beggan

INSPECTOR