



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 05/09/19

gan C MacFarlane BSc(Hons) MSc
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 07.10.2019

Appeal Decision

Site visit made on 05/09/19

by C MacFarlane BSc(Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 07.10.2019

Appeal Ref: APP/E6840/A/19/3231647

Site address: Magor Pill Farm, Whitewall, Magor NP26 3EE

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 R Cullimore (R C J Cullimore) against the decision of Monmouthshire County Council.
 - The application Ref DM/2018/01459, dated 22 August 2018, was refused by notice dated 2 May 2019.
 - The development proposed is change of use of 4 No. bays from agricultural to B2/B8 uses including cladding 2 No. bays on eastern elevation of existing building to include roller shutter doors.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether the development is acceptable in terms of i) flood risk, with particular regard to national planning policy, and ii) local planning policies relating to employment development in the countryside.

Reasons

Flood risk

3. The appeal site comprises part of a large, modern agricultural building. The remaining part of the building is currently used in connection with the farm business and does not form part of this appeal. A number of other buildings of similar appearance are located close to the site, with the remainder of the farm complex being separated by a road. It falls entirely within Zone C1 flood area, as defined by the Development Advice Maps (DAMs) referred to in Welsh Government Technical Advice Note 15 'Development and Flood Risk' (TAN 15). Flood Zone C1 is defined as areas of the flood plain which are developed and served by significant infrastructure, including flood defences.
 4. Planning Policy Wales, Edition 10 (PPW), aims to minimise and manage environmental risks and pollution and contains relevant policies on flood risk. Paragraph 6.6.22 states that "Flooding as a hazard involves the consideration of the potential
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consequences of flooding, as well as the likelihood of an event occurring. Planning authorities should adopt a precautionary approach of positive avoidance of development in areas of flooding from the sea or from rivers." TAN 15 categorises employment uses as 'less vulnerable development', which paragraph 6.2 states should only be permitted within Zone C1 where it is justified in that location. Paragraph 6.2 goes on to set out the tests which development must meet in order to be justified, which includes consideration of the consequences, and acceptability, of a flooding event.

5. The appellant has submitted a Flood Risk Assessment, however this relates to a previous application on another of the agricultural buildings and is therefore not specific to the appeal site or proposed development. As confirmed by Natural Resources Wales (NRW) in its response to the application, the assessment does not contain any flood modelling information, meaning a determination on the risks and consequences of flooding cannot be made. In the absence of such information, it has not been demonstrated that test iv) of TAN 15 paragraph 6.2 would be met. Therefore, notwithstanding the confirmation from NRW that it raises no objection to the proposal, there is insufficient evidence to demonstrate that the consequences of a flooding event have been considered and found to be acceptable. I note the submissions from both the Council and the appellant do not address the justification requirements of tests i) to iii) of TAN 15 paragraph 6.2, however as test iv) has not been fulfilled there is no need to consider this matter further.
6. I conclude that the proposed development would conflict with national planning policy regarding flood risk, and with Policies S12 and SD3 of the Monmouthshire County Council Local Development Plan 2011-2021 (LDP), which reiterate the need to avoid flood risk.

Employment development in open countryside

7. The site is located outside of any development boundary, within open countryside. PPW and Technical Advice Note 6 'Planning for Sustainable Rural Communities' (TAN 6) support the diversification of the rural economy, to meet the needs of both traditional and new industries, whilst minimising the impacts on local communities and the environment. Paragraphs 5.74 and 5.76 of the LDP recognise the need to balance rural enterprise with the principles of sustainable development and priority is given to the re-use or adaptation of existing buildings, with conversion to employment uses being promoted. LDP Policy S10 supports this approach by enabling the provision of rural enterprise and diversification where appropriate.
8. LDP Policy RE2 provides a framework for proposals specifically involving the conversion of buildings in open countryside to employment use, with such developments being supported subject to a range of detailed criteria. Due to the nature, scale and location of the proposal, it would comply with most criteria with criterion d) being in dispute. In recognition of possible abuse of the planning system whereby such buildings could be erected for agricultural use with the intention of early conversion to another use, criterion d) permits conversion of a modern building where it has been used for its intended purpose for a significant period of time. The policy indicates that close attention will be given to buildings less than 5 years old or used for their intended purpose for less than 5 years. Nonetheless, the Council considers 10 years to be a significant period of time based on the time period for removal of unused agricultural buildings as set out in the Town and County Planning (General Permitted Development) Order 1995. However, there is no reference to this definition within the policy or supporting text. The appellant has confirmed that the building commenced its use in 2011, which is not substantively disputed by the Council. This

would not fall considerably short of a 10 year period and is significantly in excess of the 5 year period referred to in the policy.

9. Criterion d) goes on to state that where there has been no change in farming activities on the unit since the building in question was erected then permission for conversion may be refused. I acknowledge that the two years of sheep records provided are not conclusive of a continuing trend, and there are fluctuations within beef numbers, however these are indicative of an overall decline in livestock numbers. When considered alongside the reduction in land holding and changes to lambing practices, there is evidence of a change in activities, which has resulted in the appeal site becoming surplus to requirements. The proposed development would therefore comply with LDP Policy RE2.
10. The proposal has been submitted by the appellant as a form of agricultural diversification, which LDP Policy RE3 supports subject to meeting a range of detailed criteria. However, as it would accord with the approach to employment development in the open countryside as set out in LDP Policy S10 and has already been justified against LDP Policy RE2, which is the supporting policy specific to the conversion of buildings to employment use, it is not necessary for the proposal to additionally meet the more general requirements of LDP Policy RE3.
11. With regard to LDP Policy E2, the policy wording refers to proposals by 'new, non-speculative single-site users that cannot be accommodated on existing or proposed industrial or business sites'. The supporting text clarifies that this is to enable proposals for employment use by single-site users/specific large employers that cannot find suitable sites on existing or allocated industrial/business sites. Due to the scale of the proposal, and small size of the four units, it could not be considered to satisfy the requirements of a 'non-speculative single-site user' or 'specific large employer'. Policy E2 is therefore not applicable in the consideration of this proposal.
12. I conclude that the proposal would be an acceptable form of employment development in the countryside and would comply with Policies S10 and RE2 of the LDP, which seek to support the County's rural economy by enabling the provision of rural enterprise and permit the conversion of buildings in the countryside to employment use where appropriate.

Other Matters

13. Regarding the potential for adverse impacts arising from noise and disruption as a result of the proposal, there is insufficient evidence provided to demonstrate the likelihood that significant harm would occur. Due to the scale of the proposal, and the limited numbers of nearby properties and separation distances involved, any increase in noise or disruption would be unlikely to result in a significant adverse effect on adjacent land uses or occupiers. However, this would not outweigh the harm identified and the conflict with national policy and the adopted LDP.
14. In reaching my decision, 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 (WCFG Act). I have taken into account the ways of working set out at section 5 of the WCFG Act and 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, as required by section 8 of the WCFG Act.

Conclusion

15. Although I have found that the proposal would be an acceptable form of employment development in the countryside, the potentially significant consequences to life and property from the risk of flooding is an overriding consideration.
16. For the reasons given above, the appeal is dismissed.

Claire MacFarlane

INSPECTOR