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## Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 24/05/16  
Ymweliad â safle a wnaed ar 24/05/16

**gan Mr A Thickett BA (Hons) DipTP  
MRTPI Dip RSA**

**Arolygydd a benodir gan Weinidogion Cymru**  
**Dyddiad: 15/06/16**

## Appeal Decision

Hearing held on 24/05/16  
Site visit made on 24/05/16

**by Mr A Thickett BA (Hons) DipTP MRTPI  
Dip RSA**

**an Inspector appointed by the Welsh Ministers**  
**Date: 15/06/16**

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**Appeal Ref: APP/E6840/A/16/3143186**

**Site address: Old Shop Cottage, Star Hill, Llanishen, Monmouthshire, NP16 6NT**

**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 & Mrs G Prothero against the decision of Monmouthshire County Council.
  - The application Ref DC/2015/00600, dated 13 May 2015, was refused by notice dated 6 August 2015.
  - The development proposed is a replacement dwelling of size commensurate with approved reinstated dwelling (planning approval DC/2012/00760).
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are:
  - whether the proposed development conflicts with national and local policies designed to protect the countryside
  - the impact of the proposed development on the character and appearance of the Wye Valley Area of Outstanding Natural Beauty (AONB)

### Reasons

#### Countryside

3. The appeal site is in the open countryside to the south of Llanishen. The site extends to around 0.19 ha and includes a derelict building and adjoining ruined outbuildings. The building, described as 'former cottage' on the submitted plans has a central door opening in the front elevation with ground floor window openings on either side. There are two rectangular openings above but there is no first floor. There are no windows in the other elevations and none of the openings are fitted with windows nor is there a door. The roof comprises corrugated iron sheets supported by timber trusses. There is a fireplace but no services. The adjoining spaces, described as 'former barn' and 'former shop' are enclosed by walls but are otherwise open to the elements.
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4. The appellant contends that the building is a dwelling and that, as a consequence, the appeal proposal should be considered against Policy H5 of the Monmouthshire Local Development Plan 2011-2021, adopted 2014 (LDP). Policy H5 is permissive of the replacement of dwellings in the countryside provided a number of criteria are met. The Council accepts that the building was used as a dwelling at one time but argues that the use has been abandoned and the proposal constitutes a new dwelling in the countryside for which there is no justification.
5. In 2013 the Council permitted works to the existing building to reinstate it and bring it into use as a dwelling. That permission has been implemented in so much as the access has been created but no significant works have been carried out to the building. It has not been occupied and there is no dispute that it is not habitable. The building does not, therefore, enjoy a residential use as a consequence of the 2013 permission. The building can only benefit from residential use and Policy H5 apply, if that use has not been abandoned.
6. The criteria for abandonment as set in '*Hartley v Minister of Housing and Local Government [1970] 1 QB413*' are generally accepted to be the tests against which this matter is judged. The criteria are:
  - i. the physical condition of the building
  - ii. the length of time for which the building had not been used for residential purposes
  - iii. whether it had been used for any other purposes
  - iv. the owners' intentions
7. I have described the building above. The main building has the appearance of a traditional cottage but it is not habitable. The outbuildings are little more than ruins. According to a planning officer's report relating to an unsuccessful application made in 1990 for 'Cottage rehabilitation and extension', the proposal related to '*a small redundant stone building with a corrugated iron roof. The building is structurally unsound with the roof completely missing at one end*'. This suggests to me that the building had not been used for residential purposes for a long time before 1990. Indeed, from the decision letter relating to the subsequent appeal it is clear that the question of abandonment was raised then. The Inspector considered that there was insufficient information to reach a firm conclusion but the matter would not have been raised had there been no doubt that the lawful use of the building was residential<sup>1</sup>. From the evidence submitted, I can only be certain that the building was not in residential use in 1990 but, in light of the above, it is not unreasonable, in my view, to assume that it had not been occupied for a considerable time before then.
8. The Council accepted at the hearing that there is no evidence to suggest that the building has been used for any other purpose. Turning to the owner's intentions, I heard that the current owner, Mr Prothero, purchased the site in 2005 from Mr Davies who was the owner at the time the 1990 application was made. The description of development given on the planning application form, decision notice and subsequent appeal decision is 'cottage rehabilitation' which indicates that, at that time, it was Mr Davies' intention to use the building for residential purposes (albeit that the Inspector considered the proposal to be tantamount to a new dwelling).

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<sup>1</sup> Appeal reference P33/1527

9. However, in considering someone's intentions it is important, in my view, to consider their actions as well as their words. I do not know how long Mr Davies owned the site before he made the application in 1990 but the building was in a parlous state and existence of residential use was clearly in doubt. It is pertinent to note (although not conclusive) that the Council considered the application under Policy S11(A) of the Gwent Structure Plan which relates to the conversion of redundant buildings in the countryside. In its statement relating to the appeal referred to above the Council argued (as it does now) that the policy relating to replacement dwellings '*is not relevant as the building in question no longer has a residential use as its use has clearly been abandoned*'.
10. Mr Davies appears to have done nothing to pursue the rehabilitation of the building after the appeal was dismissed in 1992. The plans submitted with applications in 1990 and 1991<sup>2</sup> showing the existing elevations show that a roof covered the former cottage and the adjoining former barn. Further, the eastern wall of the former shop extended above first floor level. There is no longer a roof over the former barn and the gable walls between the former barn and shop and at the end of the former shop have gone above ground floor. Allowing the building to deteriorate does not support an argument that it was the owner's intention to re establish a residential use. To my mind this is a strong indication that the use of the building for residential purposes had already been abandoned before it was purchased by Mr Prothero.
11. Mr Prothero stated at the Hearing that it was always his intention to use the building as a dwelling but he could not afford to do so until 2012 when an application was submitted for 'Proposed reinstatement of existing dilapidated former house'. Planning permission was granted in March 2013. Details were submitted to discharge various conditions but only after the appeal application had been submitted to replace the building in May 2015 (details submitted in July 2015), an indication, in my view, that in 2015 the appellant's first preference was not to utilise the existing building. Notwithstanding what has been said and applied for, the considerable time the building has been left to deteriorate casts significant doubt regarding the intentions of the owners, particularly Mr Davies.
12. The appellant seeks to rely in part on a statement made by Council officers in their committee report recommending approval of the 2013 permission. In that report Council officers said that '*the development is considered an acceptable sympathetic reinstatement of what is (my emphasis) a traditional cottage*'. I accept the Council's explanation that this described the appearance of the building and does not indicate an acceptance that the building benefits from a residential use. I have also had regard to the Council's opinion provided by the appellant. That opinion criticises the Council's approach to the question of abandonment but does not reach a firm conclusion.
13. Turning back to the 4 tests, the evidence suggests that the building has not been put to any other use. The building has not been used for residential purposes for at least 26 years and very probably for very much longer. It is not and the evidence suggests that it has not been habitable for at least 26 years and its condition has deteriorated significantly in that time. Finally, despite what I have heard and read about the owners ambitions, I am not persuaded that, Mr Davies in particular, had any serious intention to use the building for residential purposes. On balance, therefore I consider

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<sup>2</sup> Applications 33091 & 34026

that the residential use of the building has been abandoned and that Policy H5 of the LDP does not apply.

14. However, notwithstanding my conclusion I will consider the alternative. As indicated above Policy H5 is permissive of the replacement of dwellings in the countryside provided a number of criteria are met. These include, amongst other things, that the original dwelling is '*not a traditional farmhouse, cottage or other building that is important to the visual and intrinsic character of the landscape*'. The reasoned justification to the policy states that it seeks to retain traditional dwellings that make a positive contribution to the County's rural character. As stated above the building is described as a former cottage and there is no dispute that its last use was residential. Despite its condition, I agree with the planning officers that the building has the appearance of '*a charming traditional cottage*'. It sits comfortably in its rural surroundings and, in my view, it is important to the visual and intrinsic character of the landscape of which it is a part. Its loss, therefore, would conflict with Policy H5 (a)(i).

#### Character and appearance

15. The next criteria of Policy H5 relates to the design of the building and its impact on its setting. The site lies in an area of rolling open countryside with irregular shaped fields enclosed by established trees and hedges. It is, as its designation denotes a very attractive rural area. The proposed new building has been designed to look exactly like the development permitted by the Council in 2013. However, even re-using the existing materials and '*coursed local rubble stonework*' as noted on the proposed elevations the building would clearly be new. It would stand up straight with plumb walls and clean right angles and would look very different from the reinstated existing building with its crooked charm. Consequently, the proposed building would have a different character. It would be distinguishable from the permitted reinstatement and, albeit traditional in design, would have an adverse impact on the rustic and rural setting of this part of the AONB compared to the permitted scheme. I conclude, therefore, that the proposed development would conflict with Policy H5 (b) and Policy LC4 of the LDP which seeks to protect the AONB.

#### Overall conclusions

16. I acknowledge that a new structure could be built to modern sustainable standards but the strict control of new dwellings in the countryside is an important pillar of national and local policy which seeks to protect the countryside and promote development in sustainable locations. LDP Policy LC1 sets out a presumption against new built development in the open countryside unless it is necessary for, amongst other things, the purpose of agriculture or forestry. No case is made that the proposed dwelling is required for any such use and the appellant does not seek to rely on Policy LC1. I consider that the use of the building for residential purposes has been abandoned and that the proposal constitutes a new dwelling in the countryside for which there is no justification.
17. If I am wrong with regard to abandonment, for the reasons given above, I conclude that the proposed development conflicts with Policies H5 and LC4 in that it would result in the loss of a traditional building which is important to the visual and intrinsic character of this special landscape. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

*Anthony Thickett*

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

L Powell	RPS
E Fortune	RPS
G Prothero	

### FOR THE LOCAL PLANNING AUTHORITY:

C O'Connor	Monmouthshire County Council
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### **Documents submitted to the Hearing**

Doc 1	Application and committee report A33091
Doc 2	Appeal decision P33/1527
Doc 3	Council's appeal statement P33/1527
Doc 4	Decision notice, application and committee report A34026
Doc 5	Council tax records
Doc 6	Counsel's advice to appellant

### **Plans submitted to the Hearing**

Plan A	Plans supporting application A33091
Plan B	Plans supporting application A34206