



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 29/03/21

gan Vicki Hirst, BA (Hons) PG Dip TP
MA MRTPI

Swyddog a benodir gan Weinidogion Cymru

Dyddiad: 19/4/21

Appeal Decision

Site visit made on 29/03/21

by Vicki Hirst, BA (Hons) PG Dip TP MA
MRTPI

An Inspector appointed by the Welsh Ministers

Date: 19th April 2021

Appeal Ref: APP/M6825/A/20/3265883

Site address: Land off Colonel Road and Waungron Road, Betws, Ammanford

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 (the Act) against a refusal to grant outline planning permission.
 - The appeal is made by Mr James Davies of Biofutures against the decision of Carmarthenshire County Council.
 - The application Ref: PL/00153 dated 1 July 2020 was refused by notice dated 19 January 2021.
 - The development proposed is the development of 1 detached residential unit utilising a mini piles/pad and beam construction method that responds sympathetically to the site and avoids retaining walls, major engineering and soil removal issues.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the above banner heading is taken from the application form. Whilst the same description was used by the Council in its decision notice, as the description contains superfluous and descriptive language, I have determined the appeal on the basis that it seeks permission for one detached residential unit.
 3. The appeal was submitted under section 78 of the Act against the non-determination of the application by the Council. During the dual jurisdiction period the Council issued a decision notice refusing the application. The parties have been given the opportunity to make further representations and I have dealt with the appeal as one against the refusal of permission.
 4. The application was submitted in outline with all matters reserved. The indicative plans show two alternative options for the dwelling and the Design and Access Statement indicates the overall sizes as being a length of 10 metres, a depth of 8 – 10.5 metres and a height to the north of 7.9 – 8.7 metres and to the south a height of 5.4 – 6 metres.
 5. A Unilateral Undertaking under the provisions of Section 106 of the Town and Country Planning Act 1990 (as amended) was submitted with the appeal and provides an obligation to pay a financial contribution towards affordable housing to the Council
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prior to the occupation of the dwelling. The undertaking is dated 11 February 2019 and is not signed. As such I am unable to afford it any weight.

6. I have been provided with an earlier Unilateral Undertaking sent to the Council. The duly signed undertaking is dated 20 January 2021 and provides an obligation to pay the individual contribution towards affordable housing as it applies to the individual plot prior to the occupation of the dwelling. I consider the Undertaking further below.
7. Since the application was determined by the Council the Welsh Government has published Future Wales: The National Plan 2040 and Planning Policy Wales, Edition 11 (PPW). I am satisfied that neither publication makes any material difference to the main issues in this case.

Main Issues

8. The main issues are:
 - The effect of the proposed development on protected trees and protected species; and
 - Whether the proposed development would make adequate provision for affordable housing.

Reasons

Background

9. The appeal site is located within the settlement limits of Betws defined by the adopted Carmarthenshire Local Development Plan (the LDP) and is allocated within the LDP for housing for up to six dwellings.
10. It is located on the side of a hillside sloping downwards from south to north. The site is located within a wooded area and in close proximity to three mature trees protected by a Tree Preservation Order. At the time of my site visit the site predominantly comprised an area of understorey woodland scrub and grassland. Public rights of way are located to the north of the appeal site and to the west/south west. Access to the dwelling is proposed along part of the right of way to the north, and which from the evidence before me, formerly comprised access to a dwelling and colliery. The submitted plans indicate that the access previously passed between two of the protected oak trees and this would be utilised for access to the dwelling.
11. The proposed dwelling would be located to the south of two mature oak trees that are situated close to the footpath on the northern boundary and to the north east of a further oak tree higher on the slope.
12. The Council's reasons for refusal relate to the effect of the development on the protected trees and their potential use as roosts by bats and the absence of a contribution towards affordable housing. No further explanation of the refusal reasons or statement of case has been provided.
13. The site is allocated for housing development and is located in a sustainable location within the settlement limits. In addition, I note that the site has been the subject of planning permission for housing in the past. As such I am satisfied that the principle of development is acceptable.

Protected Trees

14. The three protected trees are classified in the appellant's arboricultural report as being A1 category (high quality, most desirable for retention) and described as being very fine open grown trees with the potential to survive for centuries more. From my own observations on site, it was apparent that the trees make an extremely important contribution to the visual amenities of the area and are highly visible from the surroundings including the two rights of way in the vicinity of the appeal site.
15. The dwelling would be constructed utilising a mini piles/pad and beam construction method which is contended would avoid retaining walls, engineering works and soil removal and therefore protect the trees. The plans indicate that the dwelling itself would be located outside the root protection areas of the trees identified within the appellant's arboricultural report.
16. Whilst I acknowledge that piling and pad and beam construction methods have the potential to be less damaging to the surrounding root zones of the trees, I have no substantive evidence before me that this approach would eradicate the risk to the trees. The appellant's arboricultural expert does not comment on the specific design or construction method proposed for the dwelling and its associated effect on the trees. Furthermore, the submitted drawings provide minimal details in respect of any associated works with the dwelling, in particular any proposed pathways and steps into the house, hardstanding areas, storage proposals, and works to provide a garden. In my view it is inevitable that some engineering works would be required to reprofile the surrounding land due to the steep topography and position of the dwelling on the slope and to facilitate satisfactory access into and around the dwelling and provide services and an area of amenity space. The dwelling would be located in very close proximity to the existing and future root protection areas and there is a high likelihood that such works would encroach into the root protection areas. In the absence of conclusive information to the contrary I am unable to conclude that the works would not be harmful to the protected trees.
17. The originally submitted plans indicated that a driveway would follow the public right of way with a turning head and parking area to the north of the dwelling. A footpath would provide access to the house. In respect of these arrangements, whilst I note the contention that this route was originally used to gain access to the colliery and its subbase is still in situ, it was evident from my observations on site that any use of this route by vehicular traffic has long ceased. I note the intention to use a no dig cellular confinement system for the access. However, I am not persuaded from the evidence before me that the access would not require relaying and that pedestrian access to the house would be able to be provided without substantial reprofiling of the slope to gain access. Such works would be directly within the root protection zone and would be potentially harmful to the protected trees.
18. I note the submitted option to provide parking at the north east end of the right of way close to the junction with Colonel Road/Waungron Road. However, there would still be a requirement to provide pedestrian access with its likely associated changes to gradients to facilitate access to the dwelling that I have identified above. Furthermore, the location of parking a long way from the proposed dwelling is likely to lead to future pressure for additional parking near to the house.
19. I note the intention is to provide glazing and orientate the dwelling to gain the benefits of passive solar gain and to this extent I am satisfied that it is in accord with

the objectives of national planning policy to maximise energy efficiency taking account of location¹. Nonetheless, given the anticipated long life expectancy of the trees and the proposed position of the dwelling on a north facing slope, with mature trees in very close proximity including to the west, I concur with the Council's view that it is likely that there would be pressure from any occupants of the property to carry out pruning and canopy reduction to increase light into the property for greater parts of the day. Furthermore, given the proximity of the trees to the dwelling, there would be a perceived risk to future occupants that is likely to lead to requests to carry out works to the trees to reduce the risk from falling limbs. Such works would have the potential to be harmful to the amenity value of the protected trees.

20. Taking account of these matters, and in the absence of any conclusive evidence to the contrary, I conclude the proposed dwelling would be harmful to protected trees. As such it would not be in accord with policies SP14, GP1 and EQ5 of the LDP which seek to protect features of the natural environment and which contribute to local distinctiveness, nature conservation or landscape.

Ecology

21. The appellant's Preliminary Ecological Appraisal identifies the potential for the mature trees to provide potential bat roost features. However, in response to the Council's concerns, it concludes that the risks of disturbance to bats from headlights using the car parking area are low and could be minimised through appropriate screening of the parking area.
22. Natural Resources Wales (NRW) as the statutory consultee considers that the proposal is unlikely to have a significant impact on bats. Any impacts from lighting could be controlled through an appropriate lighting strategy.
23. I have no evidence before me that the trees are used as bat roosts. However, even if they were, I am satisfied that the proposal would not result in any direct impacts to the use of the trees as roosts. Whilst I note concerns regarding light disturbance, I concur with NRW that such matters could be controlled through an appropriately worded condition requiring a lighting strategy to be submitted and agreed.
24. I have nothing before me to suggest that the development would cause harm to any other ecological interests. I conclude that the proposal would not result in disturbance or harm to protected species and would be in accord with policies SP14, GP1 and EQ5 in this regard.

Affordable Housing

25. Policy AH1 of the LDP requires a contribution to affordable housing to be made on all housing allocations with commuted sums sought where proposals fall below certain thresholds (as in this case). The contribution would be based on floor space as set out in the Council's Affordable Housing Supplementary Planning Guidance.
26. As set out above, the appellant has submitted a Unilateral Undertaking that includes an obligation to pay the appropriate amount. Given the policy context and the requirement for contributions towards affordable housing, I consider the obligation to be necessary, reasonably related to the proposed development and related in scale and kind. As such it meets the appropriate tests set out in Circular 13/97 "Planning Obligations" and the three statutory tests set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010.

¹ Paragraph 3.7, Planning Policy Wales, Edition 11, February 2021

27. As such I find the proposal would make adequate provision for affordable housing and would be in accord with policies AH1 and GP3 of the LDP.

Conclusions

28. I have taken into account all other matters raised, including the planning history, the previous appeal decision² and other examples of dwellings close to trees. I have not been provided with the full details of other cases. Nevertheless, I am required to determine the particular proposal before me on its own merits. In respect of the previous appeal, whilst I note the contention that the previous Inspector found this plot to be acceptable in principle, it is apparent that the previous development was concerned with three dwellings and related to an alternative design approach and form of construction. As such the previous appeal does not alter my findings. No other matters outweigh the harm that I have identified. For the above reasons I dismiss the appeal.

29. In reaching this 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 one or more of the Welsh Minister's well-being objectives as required by section 8 of the Act.



INSPECTOR

² PINS Ref: APP/M6825/A/19/3236012