



Appeal Decision

by R H Duggan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 13/08/2024

Appeal reference: CAS-02973-W9M8J8

Site address: Bryngwyn Farm Fach, West of Temple Bar Inn, Carmel, Llanelli SA14 7UH

- 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 & Ms Johan & Gina Mansart & De Wulf against the decision of Carmarthenshire County Council.
 - The application Ref PL/05039, dated 9 November 2022, was refused by notice dated 30 March 2023.
 - The development proposed is the provision of traveller site with twin unit caravan, day/utility room, touring caravan, agricultural buildings, solar array and access improvements (partly in retrospect)
 - A hearing was held on 25 June 2024
 - A site visit was made on 27 June 2024.
-

Decision

1. The appeal is dismissed insofar as it relates to the agricultural buildings. The appeal is allowed, however, insofar as it relates to the remainder of the application and planning permission is granted for the provision of traveller site with twin unit caravan, day/utility room, touring caravan solar array and access improvements at Bryngwyn Farm Fach, West of Temple Bar Inn, Carmel, Llanelli SA14 7UH in accordance with the terms of the application Ref: PL/05039, dated 9 November 2022, subject to the conditions set out in the attached schedule.

Procedural Matters

2. It is clear from the evidence and my site visit that the development has already been largely constructed. As such I have determined the appeal on the basis that it seeks retrospective consent under the terms of Section 73A(2)(a) of the 1990 Act.
3. The description of the development set out in the banner heading above is taken from the Council's decision notice as this is a more accurate and succinct description of the development.
4. The fact that the appellant and the other beneficiaries of the development fall within the definition of 'Gypsies and Travellers', as defined by Welsh Government Circular 005/2018: *Planning for Gypsy, Traveller and Showpeople Sites* (2018) (WG Circular

05/2018), is a matter of common ground and this was confirmed at the hearing. I have fully considered the written and oral evidence submitted in this respect and have no reason to come to a different conclusion on such a matter. The legal and planning policy framework relating to Gypsies and Travellers is therefore relevant and fully engaged for the purposes of this appeal.

5. Welsh Government Planning Policy Wales Edition 12 (PPW) was published in February 2024 during the determination of this appeal. I have taken this into account, but in this case the changes made to PPW do not raise any new matters that would have any significant bearing on the decision.

Main Issues

6. The main issues are:

- the effect of the development on the character and appearance of the area, and whether the site is located within a sustainable location;
- whether the proposal would be in an acceptable location for development having regard to planning policies relating to flood risk;
- whether there are any material planning considerations, in particular those relating to the need and supply of Gypsy and Traveller accommodation and the personal circumstances of the appellant's family, that would be sufficient to outweigh any harm identified.

Reasons

Sustainability

7. For the purposes of planning policy, the site falls within the open countryside where local and national policies seek to strictly control development. The Adopted Carmarthenshire Local Development Plan (LDP) 2014 sets out a spatial strategy and Strategic Policy SP1 seeks to promote sustainable development by distributing development to sustainable locations in accordance with the settlement framework, supporting the roles and functions of the identified settlements. The explanatory text to the policy also refers to the aims of reducing dependence on the car by directing growth and development to settlements and locations where services and facilities are available. Policy H7 of the LDP permits proposals for Gypsy and Traveller caravan sites where the location is reasonably accessible to a range of facilities and services and is within close proximity of main transport routes.
8. Circular 5/2018, 'Planning for Gypsy, Traveller and Showpeople Sites' states that sites in the countryside can be considered if there is a lack of suitable locations within or adjacent to settlements. The Circular goes on to say that decision makers should be realistic about the availability of transport modes other than the car and avoid an overly rigid application of national and local policies which seek to reduce car borne travel. The guidance in the Circular, which was published after the adoption of the LDP and provides flexibility when assessing the location of proposals.
9. The site is located some 350m west of the village of Temple Bar, and approximately 6.5km from Llandeilo and approximately 4km (linear distance) from Llandybie. The nearest main settlements offering a range of services and facilities are Llandybie and Llandeilo. They provide public transport connections and several of the services and facilities the residents are likely to access on a frequent basis. However, there is only one bus per week travelling through Temple Bar, and due to the distance separating the

appeal site from the larger settlements of Llandeilo and Llandybie, the site cannot be described as having reasonable access to facilities and services.

10. I have taken into account the way of life of the appellants and their need to be on hand to tend to their animals, but this does not override the need to be close to essential services and facilities. In reaching this view I have taken into account the Welsh Parliament's Local Government and Housing Committee report 'Provision of sites for Gypsy, Roma and Travellers' (2022) (the LGHC report) submitted by the appellants, which highlights the historic unsuitability of site provision in Wales with regard to, amongst other things, inadequate access to schools, shops and facilities.
11. The more permissive approach provided by the Circular is a material consideration that weighs in favour of the development. However, the Circular was published prior to the adoption of Future Wales and the publication of the latest version of PPW, both of which emphasise the importance of minimising the need to travel, ensuring places are accessible by active travel modes and not dependent on the car.
12. The appellant has drawn my attention to other Gypsy & Traveller sites in rural locations. I do not dispute that there is a general acceptability of Gypsy and Traveller sites being located in rural areas. Nevertheless, I consider the site is not well related to community services and facilities, and the appellants confirmed at the hearing that they would be reliant on the car for journeys to shops, leisure and medical facilities. Therefore, the development conflicts with LDP Policies SP1 and H7 and national policy as set out in Future Wales and PPW.

Character and Appearance

13. Strategic Policy SP14 'Protection and Enhancement of the Natural Environment' states that development should reflect the need to protect, and wherever possible enhance the County's natural environment with due consideration given to areas of nature conservation value, the countryside, landscapes and coastal areas. Policy GP1 of the LDP requires development proposals to conform with, and enhance, the character and appearance of the site, building or area. Criterion d) of Policy H7 states that proposals for Gypsy and Traveller sites will be allowed provided there is no adverse effect on the landscape.
14. The site covers an area of approximately 0.32ha in the south eastern corner of a wider agricultural field which extends to some 3.31ha. Although the site and surrounding area is not subject to any landscape protection designation, it is clear that the site is located in a tranquil rural setting which is characterised by sporadic properties and farmsteads. Due to the scale of the development, with its varied buildings, caravans, extensive hardstanding, parked cars and domestic paraphernalia, it clearly alters the character and appearance of the site. It can be clearly viewed from the public footpath on the other side of Nant Pysgodlyn and along the adjoining highway, as well as from elevated viewpoints to the north. The overall development appears in stark contrast to the surrounding rural landscape, thus harming the character and appearance of the area in conflict with LDP Policies GP1 and H7.
15. However, the Circular acknowledges that gypsy and traveller accommodation would be acceptable in the countryside should a need be demonstrated which cannot be met elsewhere. There is also an acceptance in Policy H7 of the LDP that sites can be located outside settlements. As such, there must also be an acceptance that some impact to the character and appearance of the landscape is inevitable in these instances. The twin unit caravan is proposed to be relocated to a position closer to the north-eastern boundary where the adjacent hedgerow would help to screen the building, and future landscaping

of the site, which could be conditioned, would also help to minimise the harmful impact of the development.

Flood Risk

16. Both Welsh Government (WG) and NRW have clarified that the Flood Map for Planning (FMfP) constitutes the best available spatial information in respect of flood risk and that it may, therefore, represent a material consideration in planning decisions [WG Letter, dated 15 December 2021, Ref: MA-JJ-3967-21].
17. The application site is not within a flood zone as defined by the Development Advice Maps of Technical Advice Note 15 (TAN15). However, due to the presence of Nant Pysgodlyn along the site's southern boundary, part of the development (the agricultural buildings) are identified as being located within Surface Water and Small Watercourse Flood Zones 2 and 3 of the most up to date FMfP. NRW has not objected to the development but advise the need to consult the Local Lead Flood Authority due to the site's proximity to Nant Pysgodlyn. The Sustainable Drainage Approval Board raises concerns regarding surface water and advises the appellants should include measures to protect the development and provide evidence that the development and any flood mitigation measures would not adversely affect neighbouring properties in terms of flood risk. The appellant has not provided a Flood Consequence Assessment as requested by the Council.
18. PPW advises amongst other matters, that the provision of Sustainable Drainage Systems (SuDS) must be considered as an integral part of the design of new development and considered at the earliest possible stage when formulating proposals for new development. In guiding new development, the planning system should at the very least ensure the incorporation of measures at an individual site scale in order to secure cumulative benefits over a wider area. In support of this TAN 15 advises, amongst other things, that development should not increase the risk of flooding elsewhere. Run off from developments in these areas can, if not properly controlled, result in flooding at other locations and significantly alter the frequency and extent of floods further down the catchment.
19. Therefore, based on the current layout of the development (shown on Plan 02f) and the available information before me, it has not been demonstrated that an acceptable form of surface water drainage, which would not increase flood risk elsewhere, is likely to be achieved for the development in accordance with national policy objectives. This accords with the response from the Council's Sustainable Drainage Approval Body and a precautionary approach is therefore appropriate.
20. However, the Council's Sustainable Drainage Approval Body confirmed at the hearing that if the agricultural buildings were not part of the development or were moved to the northern part of the site their concerns would be addressed. As these elements of the scheme can be clearly severed from the remainder of the development it is possible for me to separate them in my decision and refuse permission for the agricultural buildings.

The need for accommodation and Personal Circumstances

21. The Housing (Wales) Act 2014 places a statutory duty on local authorities to provide Gypsy and Traveller sites where there is an identified need. The County Council's most recent Gypsy and Traveller Accommodation Needs Assessment (2019) (GTANA) identifies a shortfall of 23 pitches by 2024 and 31 by 2033, but this assessment has not been ratified by the Welsh Government, as confirmed by the Council at the hearing. The Council's evidence demonstrates that since the production of the GTANA in 2019, planning permission has been granted for 29 pitches, and the Council explained that the

need identified in the GTANA has been met and exceeded. The Council also confirmed that allocated sites would be confirmed within the emerging Replacement LDP.

22. Although planning permission has been granted for 29 pitches, the appellants state that these sites are privately owned and simply meet the needs of the respective owners and are not available on the open market or available to prospective occupiers such as the appellants. These views were supported by the representative of Travelling Ahead who expressed concern that the GTANA underestimated the level of need in the County and that many Gypsy and Travellers have found it difficult to purchase sites from local landowners.
23. I acknowledge the fact that the Council has granted a number of planning permissions for Gypsy and Traveller pitches in recent years, and that this has met the interim need for such pitches in the County. Nevertheless, these sites are intended to meet the needs of the site owner and their family / friends and there are no sites available for sale or rent that could accommodate the appellants and their young family. In addition, it is clear from the evidence I heard at the hearing that the long term provision of pitches, through the allocated sites within the Replacement LDP, would take a number of years to be delivered. Therefore, there is currently a shortfall in the provision of available pitches within the County to meet the needs of the Gypsy and Traveller Community and there is a lack of an appropriate alternative private or publicly owned sites to accommodate the needs of the appellants. A conclusion which was also reached by my colleagues in allowing appeals in Felinfoel, Llanelli (Reference: CAS-02579-Z6S0Z2) and Nantycaws, Carmarthen (Reference: APP/M6825/A/21/3276330).
24. Within this context, it is extremely unlikely that there would be any other suitable lawful sites available to the appellants should they have to leave the appeal site. The appellants confirmed that should the family be evicted from the site they would be forced into living on the roadside, regardless of the problems that would be likely to arise from such a situation. This is a matter which merits substantial weight in my decision making process.
25. The dismissal of the appeal would, therefore, result in the direct loss of the family home and displace the family members, none of whom have an alternative base. Such factors weigh significantly in favour of the proposal, particularly in light of the statutory duty placed upon the Local Authority by the Housing (Wales) Act (2014). In coming to this conclusion, I have been mindful of the fact that the failure to secure planning permission at the site could potentially result in the need for the appellants and their children to leave the area or take up an itinerant lifestyle. Such a situation would have clear and obvious implications for the family's ability to gain access to necessary facilities and services, such as education and health, as well as their overall stability, which is of particular importance in this case given that the appellants have a young family.
26. The provisions of the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010 are therefore engaged. Specifically, Article 8 and Article 1 of Protocol 1 the European Convention on Human Rights, incorporated into the HRA, requires that decisions ensure respect for private and family life and the home, and to the peaceful enjoyment of their possessions. Given the protected characteristics of the appellants, due regard also must be given to the equality aims set out in the PSED, whilst the rights of the children must also be seen within the context of Article 3 of the United Nations Convention on the Rights of the Child which requires that the best interest of the children shall be a primary consideration. Indeed, it is well established in law that no other factor should inherently carry greater weight in the decision making process than the best interest of the children.

27. In this case, the best interests of the children clearly coincide with those of the appellants. The appellants confirmed at the hearing that their children are settled within local schools in Llandeilo and the eldest child will be moving from primary to secondary school in September. In this respect, whilst I acknowledge the fact that many children successfully move schools when their parents move home, it is acknowledged that accessing education from no fixed address, or from a series of unauthorised sites, can be problematic. Indeed, given the consequences of the appeal being dismissed, it is likely that the continuity and stability of the children's education, along with their general well-being, would be compromised. In this respect, it is clear that the best interests of the children would be for them to remain on the appeal site. It is clear that dismissing the appeal would interfere with the right to respect for private and family life and for the home, and to the peaceful enjoyment of their possessions. Furthermore, it would result in an interference with the best interest of the children which directly align with that of the appellants.
28. Nevertheless, such rights are qualified, and interferences may be justified where they are proportionate and in the public interest. In this case, I have found the appeal site is located in an unsustainable location away from local services and facilities contrary to National Planning Policy. I have also concluded that the development currently has a harmful impact on the character and appearance of the area, although the existing hedgerows helps to screen the development to some extent. However, I consider the location of the site and the identified harm do not outweigh the matters in support of the proposal, including the lack of available alternative sites and the personal circumstances described above that include the interferences with the human rights of the family and the best interests of the children.
29. Therefore, I conclude that the limited harm to the character and appearance of the area is clearly outweighed by other factors. In these circumstances, I find a permanent permission to be justified and there is no need to consider the merits of a temporary permission.

Conditions

30. Guidance in relation to the use of conditions is set out in Welsh Government Circular 016/2014: The Use of Planning Conditions for Development Management. The Council submitted a list of draft conditions with reasons as part of the written statement, and these were discussed at the hearing. With the exception of the conditions discussed below, those conditions that meet the relevant tests are set out, with reasons, in the schedule of conditions. I have adjusted the wording of some of the conditions in the interest of clarity and precision. They are necessary and seek to ensure that the development avoids, or where that is not possible, mitigates as far as is reasonable, the potentially harmful effects of the development, alongside securing enhancements as sought by national policy.
31. On 18 October 2023 Planning Policy Wales was amended to require the submission of a green infrastructure statement (GIS) with all planning applications. As the development has already taken place, I consider that the submission of a GIS to be unnecessary. However, it was agreed at the hearing that a condition requiring a scheme for biodiversity enhancement should be included in its place. In the interests of biodiversity and the character and appearance of the area it was also agreed that a condition relating to external lighting and landscaping should be included.
32. Surface water drainage requires separate approval and a condition in this regard is unnecessary. The Council has also put forward a condition requiring the provision of a

visibility splay of 2.4 metres x 60.0 metres at the access to the development. However, I saw that the adjoining highway was a very quiet rural lane with very little passing traffic and the existing visibility was adequate in this context. In addition, the Council's suggested condition would require the removal of a significant length of mature hedgerow which, in my opinion, would in itself have a detrimental impact on the character and appearance of the area and on biodiversity. As such, I consider the condition to be unnecessary and the imposition of condition 11 would provide an adequate access arrangement for the development.

Overall Conclusions

33. I have taken into account all matters raised by the Council and other interested parties in objecting to the development. However, I conclude that the appeal should be dismissed insofar as it relates to the agricultural buildings, but the remainder of the development, namely the provision of a traveller site with twin unit caravan, day/utility room, touring caravan, solar array and access improvements, would be acceptable and I shall allow these elements of the development subject to the schedule of conditions attached to this decision.

34. In coming to this conclusion, 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 its contribution towards the Welsh Ministers' well-being objectives of building a stronger, greener economy as we make maximum progress towards decarbonisation, making our cities, towns and villages even better places in which to live and work and embedding our response to the climate and nature emergency in everything we do.

R Duggan

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development shall be carried out in accordance with the following plans: Location and Block Plan [01b]; Expanded Location Plan [00b]; Site Plan [02f] (excluding the agricultural buildings); Existing Floor Plan [03a]; Utility Room Floor and Elevation Plan [12a]; Photo Montage of Feed Store [09a]; Photo Montage of Battery Store and Solar Array (10a & 11a).

Reason: To ensure the development is carried out in accordance with the approved plans.

- 2) The occupation of the site shall only be by Gypsies and Travellers as defined by Welsh Government Circular 0005/2018.

Reason: The residential use of the site in this rural location would not be permitted unless occupied by a Gypsy or Traveller in accordance with Policy H7 of the LDP.

- 3) Within 3 months of the date of this decision a scheme for biodiversity enhancement shall be submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Reason: To safeguard and enhance biodiversity in accordance with LDP Policy EQ4 and paragraph 6.4.5 of Planning Policy Wales Edition 12, February 2024.

- 4) Within 3 months of the date of this decision details of all external lighting shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Reason: To safeguard the character and appearance of the area and ecology in accordance with LDP Policies GP1, EQ4 and EQ5.

- 5) Within 3 months of the date of this decision a landscaping scheme including details of trees and hedgerows to be retained and their protection through the course of the development, has been submitted to and approved in writing by the local planning authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the development hereby permitted and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: To safeguard the character and appearance of the area and ecology in accordance with LDP Policies GP1, EQ4 and EQ5.

- 6) Within 3 months of the date of this decision the twin unit static caravan shall be moved from its current position to the proposed amended position as indicated on Site Plan [02f] and shall thereafter remain in that position in perpetuity.

Reason: To ensure that the residential unit is not within the flood zone area of the nearby Nant Pysgodlyn in accordance with LDP Policy SP2.

- 7) Within 3 months of the date of this decision a scheme for foul drainage shall be submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Reason: To ensure drainage facilities are provided for the proposed development in accordance with LDP Policies GP1 and EP2.

- 8) No commercial activities shall take place on the land including the storage of commercial plant, machinery, or vehicles.

Reason: To safeguard the character and appearance of the area and living conditions of nearby residents in accordance with LDP Policies SP1, GP1 and H7.

- 9) No more than three vehicles shall be kept on the land for use by the occupiers of the caravans hereby permitted and none of those vehicles should exceed 3.5 tonnes in weight.

Reason: To safeguard the character and appearance of the area and living conditions of nearby residents in accordance with LDP Policies SP1, GP1 and H7.

- 10) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, comprising of two static caravan and two touring caravan shall be stationed on the site at any time.

Reason: To safeguard the character and appearance of the area in accordance with LDP Policies SP1, GP1 and H7.

- 11) Within 3 months of the date of this decision, the vehicular access shall be laid out and constructed strictly in accordance with Carmarthenshire County Council's Agricultural Access Standards for C class roads. Any access gates shall be set back a minimum distance of 12.0 metres from the highway boundary and shall open inwards into the site only. Thereafter, the vehicular access shall be retained, unobstructed, in this form in perpetuity.

Ref: CAS-02973-W9M8J8

Reason: In the interests of highway safety in accordance with LDP Policies GP1 and TR3.