

## **APPEALS**

### **The following appeals have been received since my last report to Committee:**

<b>CODE NO.</b>	A/18/3197583 (1821)
<b>APPLICATION NO.</b>	P/17/906/FUL
<b>APPELLANT</b>	MR GERALD EDWARDS
<b>SUBJECT OF APPEAL</b>	PART CONVERSION OF EXISTING OUTBUILDING TO 1NO. HOLIDAY LET WITH ASSOCIATED EXTERNAL ALTERATIONS (RE-SUBMISSION): THE COPPINGS BRYNCETHIN BRIDGEND
<b>PROCEDURE</b>	WRITTEN REPRESENTATION
<b>DECISION LEVEL</b>	DELEGATED OFFICER

The application was refused for the following reason:

1. The proposed independent holiday let unit, by reason of its design, scale and location, would constitute overdevelopment as the site is too restricted to protect the existing residential amenities of the host dwelling and would not provide reasonable standard of amenity for future occupiers of the holiday let, which will have an extremely limited and poor outlook contrary to Policies SP2 and SP11 of the Bridgend Local Development Plan (2013) and advice contained within Planning Policy Wales (Edition 9, Nov. 2016).

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<b>CODE NO.</b>	A/18/3197583 (1822)
<b>APPLICATION NO.</b>	P/17/1003/OUT
<b>APPELLANT</b>	MR FRANCIS MCDONALD
<b>SUBJECT OF APPEAL</b>	DETACHED 2 BEDROOM TWO STOREY DWELLING (RESUBMISSION OF PREVIOUS REFUSAL): 2 HEOL Y BERLLAN PYLE BRIDGEND
<b>PROCEDURE</b>	WRITTEN REPRESENTATION
<b>DECISION LEVEL</b>	DELEGATED OFFICER

The application was refused for the following reasons:

1. The proposed dwelling, by reason of its proposed scale parameters, orientation and siting, would have an overbearing and overshadowing impact on the host property and would be overlooked by, and would overlook, adjoining properties, to the detriment of the residential amenities of existing and future residential occupiers, contrary to Policy SP2 of the Council's Local Development Plan (2013), Notes 1, 2 and 6 of the Council's Supplementary Planning Guidance Note 02: Householder Development (2008) and advice contained within Planning Policy Wales (Edition 9, Nov 2016).
2. The proposed dwelling, by reason of its proposed scale parameters and siting, constitutes an overdevelopment of the site that would not provide an adequate level of outdoor

amenity space for the occupiers of the host property (2, Heol y Berllan) or the future occupiers of the proposed dwelling, contrary to Policy SP2 of the Council's Local Development Plan (2013), Note 8 of the Council's Supplementary Planning Guidance Note 02: Householder Development (2008) and advice contained within Planning Policy Wales (Edition 9, Nov 2016).

3. Insufficient details in respect of the means of surface water drainage have been submitted to enable the implications of the proposal to be properly evaluated by the Local Planning Authority. As such the development could increase the flood risk to adjoining property.

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<b>CODE NO.</b>	A/18/3197617 (1823)
<b>APPLICATION NO.</b>	P/17/1001/FUL
<b>APPELLANT</b>	MR B & MRS C THOMAS
<b>SUBJECT OF APPEAL</b>	INCLUSION OF AGRICULTURAL LAND WITHIN CURTILAGE OF DWELLING: LAND REAR OF 51 HIGH STREET LALESTON
<b>PROCEDURE</b>	WRITTEN REPRESENTATION
<b>DECISION LEVEL</b>	DELEGATED OFFICER

The application was refused for the following reasons:

1. The site lies in a rural area and the proposal which constitutes an undesirable and inappropriate form of development outside any existing settlement boundary and within a green wedge would be prejudicial to the character of the area in which it is intended that the existing uses of land shall remain for the most part undisturbed, would be contrary to established national and local planning policies and would set an undesirable precedent for further applications for similar development in this area, contrary to Policies PLA1, ENV1, and ENV2 (4) of the Bridgend Local Development Plan 2013 and the principles of Planning Policy Wales (Edition 9, 2016).
2. The proposed development by reason of its siting and nature, constitutes an undesirable and inappropriate form of development that would be detrimental to the character and appearance of the existing countryside, the surrounding Laleston Conservation Area and a Special Landscape Area contrary to Policies ENV1, SP2, SP5, and ENV3(7) of the Bridgend Local Development Plan (2013) and advice contained within Planning Policy Wales (Edition 9, 2016).

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<b>CODE NO.</b>	A/18/3197606 (1824)
<b>APPLICATION NO.</b>	P/17/999/FUL
<b>APPELLANT</b>	B FROST & S ROGERS
<b>SUBJECT OF APPEAL</b>	INCLUSION OF AGRICULTURAL LAND WITHIN CURTILAGE OF DWELLING: LAND REAR OF 53 HIGH STREET LALESTON
<b>PROCEDURE</b>	WRITTEN REPRESENTATION

**DECISION LEVEL**

DELEGATED OFFICER

The application was refused for the following reasons:

1. The site lies in a rural area and the proposal which constitutes an undesirable and inappropriate form of development outside any existing settlement boundary and within a green wedge would be prejudicial to the character of the area in which it is intended that the existing uses of land shall remain for the most part undisturbed, would be contrary to established national and local planning policies and would set an undesirable precedent for further applications for similar development in this area, contrary to Policies PLA1, ENV1, and ENV2 (4) of the Bridgend Local Development Plan 2013 and the principles of Planning Policy Wales (Edition 9, 2016).
2. The proposed development by reason of its siting and nature, constitutes an undesirable and inappropriate form of development that would be detrimental to the character and appearance of the existing countryside, the surrounding Laleston Conservation Area and a Special Landscape Area contrary to Policies ENV1, SP2, SP5, and ENV3(7) of the Bridgend Local Development Plan (2013) and advice contained within Planning Policy Wales (Edition 9, 2016).

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**CODE NO.** A/18/3197570 (1825)

**APPLICATION NO.** P/17/1000/FUL

**APPELLANT** MR T & MRS C GREEN

**SUBJECT OF APPEAL** INCLUSION OF AGRICULTURAL LAND WITHIN CURTILAGE OF DWELLING: LAND REAR OF 55 HIGH STREET LALESTON

**PROCEDURE** WRITTEN REPRESENTATION

**DECISION LEVEL** DELEGATED OFFICER

The application was refused for the following reasons:

1. The site lies in a rural area and the proposal which constitutes an undesirable and inappropriate form of development outside any existing settlement boundary and within a green wedge would be prejudicial to the character of the area in which it is intended that the existing uses of land shall remain for the most part undisturbed, would be contrary to established national and local planning policies and would set an undesirable precedent for further applications for similar development in this area, contrary to Policies PLA1, ENV1, and ENV2 (4) of the Bridgend Local Development Plan 2013 and the principles of Planning Policy Wales (Edition 9, 2016).
2. The proposed development by reason of its siting and nature, constitutes an undesirable and inappropriate form of development that would be detrimental to the character and appearance of the existing countryside, the surrounding Laleston Conservation Area and a Special Landscape Area contrary to Policies ENV1, SP2, SP5, and ENV3(7) of the Bridgend Local Development Plan (2013) and advice contained within Planning Policy Wales (Edition 9, 2016).

**CODE NO.** A/18/317614 (1826)  
**APPLICATION NO.** P/17/439/FUL  
**APPELLANT** MR SAM REES  
**SUBJECT OF APPEAL** ERECT 3NO. DETACHED DWELLINGS AND ASSOCIATED WORKS: LAND ADJ TY GWYN HEOL Y GRAIG PORTHCRAWL  
**PROCEDURE** WRITTEN REPRESENTATION  
**DECISION LEVEL** DELEGATED OFFICER

The application was refused for the following reasons:

1. The proposed development, by reason of the number of units and their design, siting and scale, constitutes overdevelopment of the constrained site that fails to provide adequate levels of private outdoor amenity space for the future occupiers of the 5 bed dwellings, whilst having a significant detrimental impact on the privacy and residential amenities of the future occupiers of the proposed dwellings by way of overlooking. The proposed development is therefore contrary to Policy SP2 of the Bridgend Local Development Plan 2013, Supplementary Planning Guidance SPG02: Householder Development and advice contained in Planning Policy Wales (Edition 9, November 2016) and Technical Advice Note 12 – Design (2016).

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**CODE NO.** A/18/3198111 (1827)  
**APPLICATION NO.** P/17/891/FUL  
**APPELLANT** MR F & H JANES  
**SUBJECT OF APPEAL** TWO STATIC RESIDENTIAL GYPSY CARAVANS TOGETHER WITH THE ERECTION OF DAY / UTILITY ROOM, TWO TOURING CARAVANS AND RELOCATED ACCESS DRIVEWAYLAND AT THE FORMER PLAYGROUND FOUNTAIN TERRACE ABERKENFIG:  
**PROCEDURE** WRITTEN REPRESENTATION  
**DECISION LEVEL** DELEGATED OFFICER

The application was refused for the following reasons:

1. The proposal, by virtue of its siting, layout design and scale, represents an incongruous, inappropriate and unjustified form of development in this countryside location that would detract from the rural character and appearance of the area contrary to Policy COM6- Gypsy and Travellers Sites and Policy SP2 – Design and Sustainable Place Making of the Bridgend County Borough Council Local Development Plan 2006-2021; and advice contained in Planning Policy Wales Ed.9 (Nov,2016), TAN12-Design and Welsh Government Circular 30/2007 Planning for Gypsy and Traveller Caravan Sites (December 2007).

**The following appeals have been decided since my last report to Committee:**

**CODE NO.** A/17/3186793 (1815)  
**APPLICATION NO.** P/17/253/FUL  
**APPELLANT** MR TERRY COX  
**SUBJECT OF APPEAL** THE USE OF LAND FOR THE STATIONING OF A MOBILE HOME FOR RESIDENTIAL PURPOSES  
LAND AT MINFFRWD LAKES, RHIWCEILIOG, PENCOED  
**PROCEDURE** HEARING  
**DECISION LEVEL** DELEGATED OFFICER  
**DECISION** THE INSPECTOR APPOINTED BY THE WELSH MINISTERS TO DETERMINE THIS APPEAL DIRECTED THAT THE APPEAL BE ALLOWED SUBJECT TO CONDITIONS

A copy of the appeal decision is attached as **APPENDIX A**

An application for costs was made by the applicant but refused. A copy of the decision is attached as **APPENDIX B**

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**CODE NO.** A/17/3187606 (1818)  
**APPLICATION NO.** P/17/507/FUL  
**APPELLANT** MR & MRS D HOPKINS  
**SUBJECT OF APPEAL** PROPOSED KENNELS & CATTERY & TEMPORARY DWELLING:  
TY RISHA FARM, PEN Y CAE, PENYFAI  
**PROCEDURE** HEARING  
**DECISION LEVEL** DELEGATED OFFICER  
**DECISION** THE INSPECTOR APPOINTED BY THE WELSH MINISTERS TO DETERMINE THIS APPEAL DIRECTED THAT THE APPEAL BE DISMISSED.

A copy of the appeal decision is attached as **APPENDIX C**

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**RECOMMENDATION:**

That the report of the Corporate Director Communities be noted.

**MARK SHEPHARD**  
**CORPORATE DIRECTOR COMMUNITIES**  
Background Papers (see application reference number)



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**Penderfyniad ar yr Apêl**

Gwrandawriad a gynhaliwyd ar 12/01/18  
Ymweliad â safle a wnaed ar 12/01/18

**gan Richard E. Jenkins BA (Hons) MSc  
MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**  
**Dyddiad: 09/03/18**

**Appeal Decision**

Hearing Held on 12/01/18  
Site visit made on 12/01/18

**by Richard E. Jenkins BA (Hons) MSc  
MRTPI**

**an Inspector appointed by the Welsh Ministers**  
**Date: 09/03/18**

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**Appeal Ref: APP/F6915/A/17/3186793**

**Site address: Minffrwd Lakes, Minffrwd Road B4280 Junction to A4093 via  
Rhiwceiliog and Mynydd y Gaer, Rhiwceiliog, Bridgend, CF35 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 Terry Cox against the decision of Bridgend County Borough Council.
  - The application Ref: P/17/253/FUL, dated 16 March 2017, was refused by notice dated 13 June 2017.
  - The development proposed is the use of land for the stationing of a mobile home for residential purposes.
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**Decision**

1. The appeal is allowed and planning permission is granted for the use of land for the stationing of a mobile home for residential purposes at Minffrwd Lakes, Minffrwd Road B4280 Junction to A4093 via Rhiwceiliog and Mynydd y Gaer, Rhiwceiliog, Bridgend, CF35 6NT in accordance with the terms of the application, Ref: P/17/253/FUL, dated 16 March 2017, and the plans submitted with it, subject to the following conditions:
  - 1) The occupation of the site hereby permitted shall only be by the following:  
*Mr Terry Cox.*
  - 2) When the land ceases to be occupied by those named in condition No.1 the use shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.

**Application for costs**

2. An application for costs has been submitted by the appellant against Bridgend County Borough Council. This application is the subject of a separate decision.

**Procedural Matters**

3. The development has already been carried out. As such retrospective planning permission is sought under Section 73A(2)(a) of the Act.
  4. The Council has raised concern that incorrect ownership certificates have been served. In short, Certificate A was submitted at the planning application stage although,
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having found out that a small parcel of land at the entrance to the appeal site was not in the appellant's ownership, a signed Certificate D was completed with all necessary advertisements undertaken. However, the LPA considers that this was also procedurally incorrect, contending that Certificate C would have been the most appropriate certificate given that the appellant knew some, but not all, of the owners of the land in question. Nevertheless, the Inspectorate has the discretion to accept appeals in such circumstances and I am satisfied that no prejudice has been caused by the procedures undertaken. Indeed, in response to such concerns, the LPA formally consulted the owners of the land in question. It is on this basis that the Council acknowledges that nobody has been disadvantaged by the processes undertaken and I have no reason to dispute such an assessment.

5. Given the extent of the personal circumstances advanced, the appellant contends that a personal planning permission should be granted. The appeal is supported by uncontested medical evidence that indicates that Mr Cox has significant and degenerative health problems and it is on this basis that I shall consider the appeal.

### **Main Issues**

6. These are: whether the principle of development is justified, having particular regard to the planning policy framework set both locally and nationally; the effect of the proposed development upon the character and appearance of the area; and whether there are any material considerations that outweigh any identified harm.

### **Reasons**

7. The appeal relates to an irregular shaped parcel of land located to the south east of Minffrwd Road near Rhiwceiliog, Pencoed. The site shares an access with the adjacent Minffrwd Stables, which comprises an authorised gypsy and traveller site, and is bordered to the east by mature woodland. To the south of the site lie ponds associated with planning application Ref: P/08/970/FUL which granted planning permission in 2009 for the use of the land in association with a fishery business. The appeal proposal seeks planning permission for the change of use of the land to enable the stationing of a mobile home for residential purposes. The evidence indicates that the mobile home was brought onto the site within the last year, although the fact that the appellant has lived on the site in a motorhome since around 2010 is not contested. The mobile home in question has been specifically designed and adapted to meet the appellant's medical needs.

#### ***Principle of Development/ Character and Appearance***

8. The appeal site is located outside of the settlement boundaries defined by the adopted Bridgend Local Development Plan 2006- 2021 (2013) (LDP) and is therefore located within countryside for the purposes of planning. Policy ENV1 of the adopted LDP advocates strict control within such areas and there is nothing submitted within the evidence to indicate that the development satisfies the criteria of that policy which provides for a number of circumstances where development may be acceptable in such countryside locations.
9. The appellant contests that the adopted LDP is outdated and that such strict control of development should only be applied in areas of '*open countryside, away from established settlements*', as referred within Planning Policy Wales (Edition 9, 2016) (PPW)<sup>1</sup>. However, the adopted LDP remains the adopted development plan for the

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<sup>1</sup> Paragraph 9.3.6

area and I have not seen anything to indicate that the implications of its approach to development in the countryside are materially different to those of PPW when applied to the circumstances of this case. Indeed, despite the proximity of the appeal site to established residential uses and the nearby woodland, I was able to confirm at the time of my site visit that it retains open characteristics. In addition, I have already set out above that the site does not lie within an established settlement and neither does it adjoin any settlement boundaries identified within the LDP. Within this context, and bearing in mind the fact that the site is not served by a pedestrian footpath, I consider the site to be both physically and functionally separated from nearby settlements and therefore away from established settlements for the purposes of applying national policy. Furthermore, whilst I shall go on to consider the weight to be attributed to the appellant's personal circumstances later in this decision, it is notable that the development is not proposed as a rural enterprise dwelling or any other form of development that comprises a policy exemption to the strict control of development in such locations.

10. In terms of the effect on the character and appearance of the area, it is not disputed that the landscape characteristics of the site are neither prominent nor visible from medium to longer term viewpoints. The context set by the land uses in the vicinity is also clearly an importance consideration. Nevertheless, despite such mitigating factors, the proposed use encroaches into what is lawfully an area of countryside and there is little doubt that the introduction of a mobile home, and the residential paraphernalia associated with the residential use of the land, injuriously alters the rural character and general appearance of the site itself. Moreover, despite being largely screened from public vantage points, the change of use clearly serves to intensify the number of residential uses in the area, to the detriment of the rural character of the wider countryside.
11. For these reasons, I find the incursion into the countryside to be unjustified by both adopted development plan and national planning policy. I also find that it causes material harm to the character and appearance of the area. As such, the development conflicts with the general thrust of both Policy ENV1 of the adopted LDP and national planning policy which, amongst other things, seek to strictly control development in such locations.

#### ***Personal Circumstances and Other Material Considerations***

12. I have already set out above that the appeal is supported by uncontested medical evidence that indicates that Mr Cox has significant and degenerative health problems. I have no reason to dispute or bring into question the severity of such problems. The mobile home on site has already been adapted to meet the appellant's health needs and the Council has confirmed that alternative accommodation that would meet such needs is not currently available. Given these circumstances, the LPA has stated that Mr Cox would be given priority over other people on the housing waiting list. However, the Council has been unable to specify how long such a process would take and, given the appellant's very specific accommodation requirements, there is a reasonable likelihood that such a process could be far from imminent. I recognise the fact that it would be at the discretion of the Council to consider whether it would be expedient to take enforcement action should planning permission be withheld. However, there is no doubt that such uncertainty could have a significant detrimental impact on Mr Cox's well-being and general health. Such matters merit substantial weight in the planning balance.
13. Mr Cox is a keen naturalist and has lived at the site with his animals since 2010. The medical evidence supporting the appeal indicates that the tranquil and serene



environment, coupled with the ability to observe wildlife, aids his levels of relaxation and can therefore impact on overall condition and pain management. Indeed, the Council's own Community Independence and Wellbeing Team has specified that such an environment greatly enhances his overall quality of life. Whilst I have not seen anything to indicate that such a location is an absolute necessity for the appellant, such health benefits clearly add to the aforementioned considerations.

14. Whilst regrettable, it is also material to note that the medical evidence supporting the appeal indicates that Mr Cox's condition is aggressive and that his health will progressively deteriorate. This means that the number of years that he would be able to live at the site is likely to be limited. In this respect, and bearing in mind the fact that the proposal is for the use of land, rather than operational development, it is important to note that any personal planning permission would also render the permission, and indeed any harm that would arise from such a use, as temporary. I consider such a factor to weigh heavily in favour of the proposal. I shall deal specifically with the imposition of planning conditions below. However, I am satisfied that such matters could be satisfactorily dealt with by such means, including a requirement for the land to be restored once the use ceases.
15. I have found above that the change of use of the land conflicts with both local and national planning policies that seek to direct development towards established settlements. However, in order to fully assess the weight to be attached to such policy conflict, it is important to appreciate the context set by the appellant's personal circumstances. There is no doubt that the residential use of the land would require the frequent use of a private car and in this respect it would be contrary to the general thrust of national policy. Indeed, the site is not well served by public transport and neither is it accessible by a segregated pedestrian footway. Nevertheless, given the fact that the appellant's medical condition renders him immobile, and the use of public transport therefore impracticable, I do not consider such matters to weigh substantially against the proposal. Indeed, given the fact that a number of facilities and services, including the local Medical Centre, are only located approximately two kilometres away, I do not consider the site to be remote from such amenities as referred within the Council's Notice of Decision.

### ***The Planning Balance***

16. I have found that the proposed development would run counter to the general thrust of both national and local planning policies that seek to direct development to established settlements. I have also found that the change of use of the land would cause harm to the character and appearance of the area. However, I consider that the weight to be attached to such policy conflict and associated harm should be reduced significantly given the aforementioned mitigating factors. In contrast, the personal circumstances advanced in favour of the proposal are compelling and merit substantial weight in the planning balance. Indeed, such personal circumstances significantly outweigh the identified conflict with policy and associated harm to the character and appearance of the area.
17. The refusal of planning permission and any future eviction that could lead from such a decision would undoubtedly result in an interference with the appellant's right to respect for private and family life and for the home, and to the peaceful enjoyment of their possessions, as enshrined in Article 1 and Article 8 of Protocol 1 of the European Convention on Human Rights and incorporated into the Human Rights Act 1998. Whilst I acknowledge that these rights are qualified, I have concluded that the harm identified would be clearly outweighed by the personal circumstances and other material considerations advanced as part of the appeal. I therefore find that the

refusal of planning permission would have an excessive and disproportionate effect on the appellant's interest.

18. The Council has raised concern that allowing this appeal would set a precedent for future cases. However, it is well established in law that each case should be treated on its own particular merits and, for the avoidance of any doubt, the success of this case has been based on its unique set of circumstances. As any future proposals should also be treated on their own particular merits, I do not consider such concerns to merit significant weight.

### **Overall Conclusions**

19. Based on the foregoing, and having considered all matters raised, I conclude that the appeal should be allowed subject to necessary and appropriate planning conditions.
20. In coming to this conclusion, 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.

### **Planning Conditions**

21. I have considered the suggested conditions and, having had regard to the advice in Welsh Government Circular 016/2014: *The Use of Planning Conditions for Development Management* (October 2014), have adjusted their wording in the interest of clarity and precision.
22. As retrospective planning permission is sought, I do not consider the standard time commencement condition to be necessary. However, as the justification for the development is specific to the personal circumstances of the appellant, I consider suitable conditions to be necessary. Specifically, Condition No.1 would tie the planning permission to the appellant whilst Condition No.2 would ensure that the use would cease once the appellant ceases to occupy the land, with a specific requirement for the land to be restored to its condition before the development took place.
23. I note the Council's concerns regarding the enforceability of such conditions. However, having regard to the advice within Circular 016/2014, I am satisfied that the conditions imposed meet the tests of national policy. I have considered the possibility of imposing a planning condition restricting the planning permission to a time limited period, as suggested by the LPA. However, as it is not possible to predict when circumstances would change, I consider a temporary planning permission controlled by the personal circumstances of the appellant, as specified by Condition No.2, to be the most appropriate means of control.

*Richard E. Jenkins*

INSPECTOR

**APPEARANCES:**

FOR THE APPELLANT:

Mr Terry Cox	Appellant
Mr Matthew Green	Agent – Green Planning Solutions
Ms Ugne Staskauskaite	Green Planning Solutions
Mrs Jude Coad	Carer to the Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Matthams	LPA – Policy Team Leader
Ms Elizabeth Woolley	LPA - Development Management – Case Officer
Ms Amanda Borge	LPA - Appeals Officer

INTERESTED PERSONS:

Cllr Alex Williams

**DOCUMENTS:**

- 1 LPA – Letter of Notification – Hearing Details
- 2 LPA – Response to Appellant’s Application for Costs
- 3 Mr Terry Cox – Witness Statement
- 4 Appellant – Medical Records
- 5 Hearing Record of Attendance

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**Penderfyniad ar gostau**

Gwrandawriad a gynhaliwyd ar 12/01/18  
Ymweliad â safle a wnaed ar 12/01/18

**gan Richard E. Jenkins BA (Hons) MSc MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**  
**Dyddiad: 09/03/18**

**Costs Decision**

Hearing Held on 12/01/18  
Site visit made on 12/01/18

**by Richard E. Jenkins BA (Hons) MSc MRTPI**

**An Inspector appointed by the Welsh Ministers**  
**Date: 09/03/18**

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**Costs application in relation to Appeal Ref: APP/F6915/A/17/3186793**

**Site address: Minffrwd Lakes, Minffrwd Road B4280 Junction to A4093 via Rhiwceiliog and Mynydd y Gaer, Rhiwceiliog, Bridgend, CF35 6NT**

**The Welsh Ministers have transferred the authority to decide this application for costs to me as the appointed Inspector.**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322C and Schedule 6.
  - The application is made by Mr Terry Cox for a full award of costs against Bridgend County Borough Council.
  - The hearing was in connection with an appeal against the refusal of the Council to grant subject to conditions planning permission for the use of land for the stationing of a mobile home for residential purposes.
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**Decision**

1. The application for an award of costs is refused.

**Reasons**

2. Welsh Government (WG) guidance relating to an award of costs, in the form of the WG Development Management Manual (DMM) and the associated Section 12 Annex: 'Award of Costs' (May 2017) (Annex 12), advises that irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for an award of costs to incur unnecessary or wasted expense in the appeal process.
  3. The appellant contends that an award of costs is justified on the basis that the LPA:
    - i) Prevented or delayed the development which should clearly be permitted, having regard to the development plan, national policy and any other material considerations;
    - ii) Refused permission on a ground clearly capable of being dealt with by way of conditions; iii) Failed to adequately assess the sites location in terms of distances from services and facilities; and iv) Failed to adequately assess the sites impact on the character and appearance of the area. Specifically, it is contested that the Council's conduct amounts to unreasonable behaviour for the purposes of implementing Annex 12 of the DMM and that it resulted in unnecessary costs associated with the planning appeal.
  4. I am satisfied that the LPA satisfactorily considered the proposal within the light of the planning policy framework set by the adopted development plan and national policy. I am also satisfied that it assessed the impact of the proposed development in terms
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of its distances from facilities and services and the overall impact on the character and appearance of the area. Indeed, the conclusions of the appeal decision partially support the Council's conclusions on such matters. It is notable that I have concluded that the identified conflict with policy and the associated harm is outweighed by the other material considerations advanced as part of the appeal submission. However, the weight to be attributed to such factors is a matter for the decision maker and, in this respect, I am satisfied that the Council was entitled to come to the conclusion that planning permission should be refused in accordance with the reasons set out in its Notice of Decision.

5. I note the appellant's concerns about the way the LPA approached the potential use of planning conditions. Indeed, I have set out my thoughts on such a matter in some detail in the associated appeal decision and have found in favour of the appellant. Nevertheless, the Council's concerns about its ability to impose the conditions suggested by the appellant did not form part of the Council's reason for refusal. Indeed, it is clear from the evidence that the Council fundamentally objected to the principle of development and its impact upon the character and appearance of the area. As such, I do not consider that unnecessary or wasted expense has arisen from this matter alone. In coming to this conclusion, I am mindful of the fact that it is standard practice for the imposition of planning conditions to be considered in full as part of any planning appeal.
6. Based on the foregoing, I find that unreasonable behaviour that has led to unnecessary or wasted expense in the appeal process has not been satisfactorily demonstrated and that neither a full or partial award of costs is justified in this case.
7. The application for an award of costs should therefore be refused.

*Richard E. Jenkins*

INSPECTOR

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## Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 30/01/18  
Ymweliad â safle a wnaed ar 30/01/18

gan **Melissa Hall BA(Hons), BTP, MSc, MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 22/03/18

## Appeal Decision

Hearing Held on 30/01/18  
Site visit made on 30/01/18

by **Melissa Hall BA(Hons), BTP, MSc, MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 22/03/18

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**Appeal Ref: APP/F6915/A/17/3187606**

**Site address: Ty Risha Farm, Pen y Cae, Penyfai, Bridgend CF32 9SN**

**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 D Hopkins against the decision of Bridgend County Borough Council.
  - The application Ref P/17/507/FUL, dated 11 June 2017, was refused by notice dated 7 August 2017.
  - The development proposed is described as '*Kennels and cattery and temporary dwelling*'.
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## Decision

1. The appeal is dismissed.

## Procedural Matters and Background

2. The site address shown on the application form differs from that detailed in the appeal form insofar as the former refers to '*Ty Risha Farm, Pen y Cae, Penyfai...*' whereas the latter identifies the site as '*Land at Ty Risha, Penyfai...*' I am satisfied that both refer to the same site, albeit I have used that shown on the planning application form and used in the Council's decision notice for the purposes of my Decision.
  3. At the Hearing, I was provided with a copy of the proposed elevations and floorplan of the temporary log cabin dwelling, on which the Council based its decision. The drawing is inaccurate insofar as the north and south elevations are incorrectly annotated and the doors to the living room are shown in a different position on the elevations to that of the floorplan. I have taken into account the inaccuracies in assessing the proposal and I am satisfied that this matter could be dealt with by condition in the event of planning permission being granted.
  4. The Council stated that it believed the lawful use of the site to be agriculture and that no planning permission exists for any other use or for any buildings on the site. The appellants told me that the land was being used for agricultural purposes to graze sheep and that horses had been kept on the land. There are two existing buildings and a steel container on the site together with a stone wall within the site which I am told was constructed to keep the sheep contained.
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5. The development the subject of the appeal consists of two elements; the first is a new enterprise consisting of a kennels and cattery and the second is a temporary dwelling in association with the enterprise. At the Hearing, the parties agreed that the rural enterprise and rural enterprise dwelling are inherently linked, and should be considered as a single proposal rather than split into separate components.

### **Matters Arising after the Close of the Hearing**

6. Both parties were given additional time to deal with matters associated with the risk of flooding to the access road leading to the site. The appellant submitted a Flood Consequences Assessment Supplementary Report, in respect of which the Council has provided further observations from Natural Resources Wales (NRW). This matter is dealt with later in my Decision.

### **Main Issues**

7. The main issues are:
- Whether the proposal is inappropriate development in the green wedge and, if so, its effect on openness.
  - Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very exceptional circumstances necessary to justify the development.
  - Whether there is an essential need for a dwelling to accommodate a rural worker.
  - The effect on the character and appearance of the area.
  - Whether the proposal would promote sustainable development.
  - The effect of the development on highway safety.
  - Whether the site can offer safe conditions because of the risk from flooding.

### **Reasons**

#### ***Inappropriate development in the green wedge***

8. The appeal site lies to the north east of the village of Penyfai and immediately south of the M4, and within the Penyfai and Aberkenfig green wedge as defined by Policy ENV2 (8) of the adopted Bridgend Local Development Plan 2013 (LDP).
9. The development plan policy largely follows the advice in national guidance in Planning Policy Wales (PPW), which advises that inappropriate development in the green wedge is, by definition, harmful to the green wedge and should not be approved except in very exceptional circumstances<sup>1</sup>. It states that the construction of new buildings in a Green Belt or in a locally designated green wedge is inappropriate development unless it is for purposes including justified rural enterprise needs.
10. Technical Advice Note 6 '*Planning for Sustainable Rural Communities*' (TAN 6) identifies qualifying rural enterprises in relation to new rural enterprise dwellings as those comprising land related businesses including agriculture, forestry and other activities that obtain their primary inputs from the site<sup>2</sup>. The accompanying TAN 6 Practice Guide '*Rural Enterprise Dwellings*' (TAN 6 Practice Guidance) acknowledges

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<sup>1</sup> Paragraph 4.8.15 of PPW.

<sup>2</sup> Paragraph 4.3.2 of TAN 6.

that there have been cases where *'dwellings associated with other uses that are not readily located in urban or residential areas have been permitted or allowed on appeal, such as dwellings associated with substantive equine and fishery enterprises, kennels, catteries and veterinary facilities'*<sup>3</sup> [my emphasis].

11. Whilst TAN 6 and its Practice Guidance make reference to qualifying land based activities for the purposes of assessing new dwellings associated with such uses, it is nonetheless helpful in establishing the types of activities that could constitute a rural enterprise.
12. The Council accepts that a kennels and cattery could constitute a rural enterprise and, to this end, acknowledges that position taken in appeal Ref APP/G6935/A/13/2205180 at Wentwood Lodge Kennels and Stables. In allowing the appeal, the Inspector concluded on the basis of the evidence and his own observations, that the existing breeding kennels was *'... a sizeable rural enterprise with about 17 staff involved in various capacities'*.
13. However, the Council argues that the appeal decision relates specifically to a rural enterprise which is a sizeable operation and, in comparison, that proposed is not *'substantive enough'* to constitute a new rural enterprise.
14. It seems to me that kennels and a cattery each accommodating up to 20 animals at any given time, is not an insignificant number. The amount of noise and disturbance that is likely to be created by barking dogs in the kennels and the associated use of an outside exercise area / run would, in my opinion, place this use outside that which could be reasonably incorporated into a residential area without adversely affecting the amenities of its residents, notwithstanding the Council's arguments on this point. The Council could not quantify the size of enterprise beyond which it considers such a use would be inappropriate in a residential area. It pointed to the list of kennels and catteries provided by the appellants which, it states, shows a number of successful businesses operating in such environments in the wider Bridgend area. Be that as it may, I cannot be certain that the existing businesses are of the same model as that the subject of the appeal or of the capacity each one offers.
15. In the case before me, I am aware that specialist gun dog training would be carried out with some of the boarding dogs which involves, in part, teaching the animals to behave appropriately around the livestock which are on the site. Based on the appellants' oral evidence at the Hearing, I concur that this element of the scheme is not conducive to a site in, for example, a residential or employment area where there is no livestock or where it would involve potentially extensive and regular travel with the animals to a pre-arranged location before this training could be carried out. I understand from the appellants that an arrangement with a farmer to enter his land and use his livestock for the purposes of such training would be highly unorthodox and unlikely. I am of the opinion that the space needed and the nature of its use would be appropriate in a countryside location.
16. I am also told that the use would generate a projected income of £80,000 in 3 years, which the appellants contend represents a considerable and substantive enterprise.
17. In view of the above, I consider that the proposed kennels and cattery would constitute a rural enterprise for which a rural location is justified in line with TAN 6. In this context, the construction of new buildings consisting of the kennels and cattery in

<sup>3</sup> Paragraph 2.5 of the TAN 6 Practice Guidance.



the green wedge for purposes relating to rural enterprise need would not be inappropriate development as described in PPW.

18. However, as detailed above, there is a second component to the proposal consisting of the temporary dwelling. To reach a view as to whether it is inappropriate development in the green wedge, it is necessary to consider whether there is a justified rural enterprise need for the dwelling. I carry out this assessment below.

### ***Rural Enterprise Dwelling***

19. PPW states that isolated houses in the open countryside require special justification, for example where they are essential to enable rural enterprise workers to live at or close to their place of work in the absence of nearby accommodation<sup>4</sup>. The special justification needed is based on testing the functional needs and economic sustainability of the enterprise concerned.
20. The TAN 6 Practice Guidance states that proposals for new rural enterprise dwellings should be tested in a number of ways, including the Functional Test, the Time Test, the Financial Test and the Alternative Dwelling test<sup>5</sup>. TAN 6 is clear that in order to demonstrate that a new dwelling is essential to support a new rural enterprise, it must satisfy a number of criteria [my emphasis]. These are examined in turn below.

#### *Firm intention and ability to develop the enterprise*

21. The TAN states that significant investment in new buildings and equipment is often a good indication of intentions. The Planning Appraisal submitted in support of the application states that an initial sum of £5,000 would be invested in livestock<sup>6</sup>, which the appellants contend is tantamount to firm intent and an ability to develop the enterprise.
22. The Council argues that the Appraisal is limited and does not provide any other information relating to the initial start-up costs, such as the costs of the kennels and cattery buildings, which it considers would more realistically equate to a figure in the order of £30,000 - £40,000. Whilst it notes that the appellants claim to already have the materials to construct these buildings, and a commitment to undertake the construction works themselves, it questions whether the available funds are sufficient to undertake the work necessary to start-up and develop the enterprise. In any event, a heavy reliance on the sale of their existing dwelling in order to release the equity and fund the works adds to the Council's concerns, particularly as the house is not yet on the market.
23. I do not dispute the appellants' intentions insofar as there is a clear desire to start the enterprise. Nevertheless, I am not persuaded on the basis of the submitted evidence that an initial investment of £5,000 and Mr Hopkins' labour<sup>7</sup> sufficiently demonstrates an ability to develop the enterprise. I am concerned that the Planning Appraisal is silent on a number of costs that could be associated with the start-up and running of a new business, and which could seriously affect the appellants' ability to carry out the works on which the success of the business would depend. Neither is there evidence before me to confirm that the equity anticipated by the sale of the appellants' existing

<sup>4</sup> Paragraph 9.3.6 of PPW.

<sup>5</sup> Paragraph 3.3 of the TAN 6 Practice Guidance.

<sup>6</sup> At the Hearing the appellants confirmed that the £5,000 investment in livestock refers to the provision of the kennels and catteries buildings.

<sup>7</sup> I accept that the cost of carrying out the works would be comparatively less where the labour is being undertaken by the appellants rather than a paid tradesman.

dwelling is a realistic amount, that it will be achieved or even that the property will sell. Hence, I cannot conclude that the appellants have demonstrated an ability to develop the enterprise.

*Need for the new enterprise at the proposed location*

24. For the reasons I have already given, I consider that the proposed location is justified for a new enterprise of the nature proposed and that it would not be appropriate in a residential area as suggested by the Council. Neither have I been provided with details of properties for sale in the vicinity which meet the needs of the enterprise, which suggests that there are no other suitable sites where a dwelling is already available. I thus consider that this test has been met.

*Financial Test*

25. The TAN seeks clear evidence that the proposed enterprise has been planned on a sound financial basis and should have good prospects of remaining sustainable for a reasonable period of time<sup>8</sup>. It recognises that for new enterprises evidence of sound financial planning is required, which would normally be in the form of a business plan [my emphasis].
26. The appellants have submitted a 3 Year Budget in support of the application. Amongst other things, it shows that in the first 3 years the net profit after depreciation is forecast to increase by £33,514 from £20,902 to £54,416 based on growth in all income streams of the business. In the third year the business is projected to have a net profit that is high enough to cover Mrs Hopkins' wages (as a full-time worker) and the mortgage repayments for a permanent dwelling. It anticipates that the permanent dwelling would cost £150,000 to build and that the enterprise would have an operating profit each year high enough to cover mortgage repayments.
27. However, I am not persuaded that the budget plan comprehensively and robustly tests the costs of the services, the market conditions and the means of establishing the enterprise in labour and financial terms. Whilst a general figure has been put to 'Overhead costs' in the Budget Plan, I do not know exactly what these costs include or how they have been derived. Nor has the proposal received endorsement from any financial institution. Whilst the appellants assert that the budget demonstrates that the business has a realistic prospect of remaining financially sound, I am concerned that the budget anticipates that the kennels and cattery are likely to be full for a large proportion of the year in the third year and that there would be three training dogs a month (each for a 14 day period) in the third year. I also cannot say with any degree of certainty that the income from the sale of puppies is realistic, either in terms of the number of puppies being born or the price of each one. There is little assessment of the fall in income or increase in costs over a period of time in which the viability of the business could be under threat. I am not satisfied that the forecast growth is achievable, as I have no substantive evidence that supports this claim.
28. I am also concerned that any further investment in the business beyond the £5,000 initial outlay would depend heavily on the sale of the appellants' current dwelling, which is not currently on the market, the sale of which may or may not occur within a reasonable timescale or at the price anticipated. Hence the ability of the appellants to properly invest in the enterprise from the date of the permission is questionable and has the potential to seriously jeopardise its future.

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<sup>8</sup> Usually 5 years, albeit the appellants have sought a temporary dwelling for a period of 3 years and consequently, the budget plan is reflective of this shorter time period.

29. The appellants state that in the event of their existing property not selling, there is the option of taking out a bridging loan to fund the enterprise in the interim period. However I am not aware whether this is a realistic option available to the appellant, the interest rates that would be incurred as a consequence or whether the profit from the business would be sufficient to cover the additional costs.
30. I acknowledge the appellants contention that how the capital is raised to fund the works is not the concern of the LPA nor does the TAN require proof of the funds to be provided. Be that as it may, in assessing the proposal, there is a responsibility to ensure that the proposed enterprise has been planned on a sound financial basis. Clear evidence that sufficient funds have been secured and are available would inevitably assist the appellants' case in this regard.
31. In view of the above, I am not persuaded that the enterprise has been planned on a sound financial basis.

*Functional Test*

32. A functional need relates to a specific management activity or combination of activities which require the presence of a worker at most times if the proper functioning of an enterprise is not to be prejudiced. The appellants tell me that the need for one worker to be readily available at most times relates to the following principal areas of the business; to enable owners to deliver and collect the animals outside normal working hours and at weekends, to tend to the boarding dogs and cats in their care, for gun dog training purposes and to be on-site during whelping. The appellants also identify security as a second consideration insofar as there would be a high risk of theft of animals and, in particular, puppies of high monetary value if there were no on-site presence.
33. In this context it seems to me that the nature of the business is such that it would require close human attention and an on-site presence would be necessary for the business to function properly. It would require a worker to be available at times when unexpected situations might arise outside of normal working hours. However, rural enterprise dwellings should only be permitted where the scale and nature of an enterprise give rise to substantive labour requirements<sup>9</sup>. The question therefore arises as to whether this need relates to a requirement for a full time worker.
34. The appellants state that it is difficult to quantify the number of hours that the business would require as figures for managing kennels, raising puppies and gundog training are not readily available. However, they assert that having 40 dogs and cats to look after clearly demonstrates that the business meets the full-time test. In Appendix A of the Planning Appraisal, an attempt has been made at quantifying the time commitment: It anticipates exercising each dog for approximately half an hour equating to 10 hours a day and a further 2 hours a day on feeding and cleaning out. However, I am not certain that each dog would be exercised daily on a one-to-one basis, that a portion of those hours would not be supervised group access of the run / outside area or that the kennels would be full to capacity. There is no time estimate of, for example, the training of gun dogs or raising puppies.
35. In the absence of a robust assessment of the component parts of the enterprise and the amount of time apportioned to each part, together with consideration of alternative operational and management strategies that may be available to the enterprise, there is little evidence to substantiate the appellants' claims not least due

<sup>9</sup> Paragraph 4.9 of the TAN 6 Practice Guidance.

to the high bar set to justify a dwelling at this location. Whilst I accept that it may not be possible to adopt a degree of standardisation in assessing labour requirements, it is simply not enough to assert that the business would meet the full-time test without any compelling evidence of how those full-time hours would be derived. Thus, I am not persuaded that, on the basis of the evidence before me, the time test has been met in this regard.

#### *Other dwelling*

36. The TAN also requires that the functional need could not be fulfilled by another dwelling or by converting an existing suitable building on the enterprise, or any other existing accommodation in the locality. It is evident that there are no other dwellings or buildings on the holding that would be suitable to house a worker.
37. The appellants state that there are 8 properties within a mile of Ty Risha that are for sale, seven of which are at least £250,000. The property for sale that is less than £150,000 is at least a mile from the proposed dwelling. There are no properties to rent in Pen-y-Fai. I cannot be certain on what basis the search for an 'Other Dwelling' has been carried out and whether it is reflective of all properties currently on the market. However, it would appear that none of the dwellings cited would be suitable.
38. I accept that the TAN allows for situations where the case for a dwelling is not completely proven by stating that it may be appropriate to test the evidence by granting permission for temporary accommodation for a limited period; as is the case here, the proposal is for a temporary dwelling. Nevertheless, I am not satisfied that the time test or the financial tests have been met or that the appellants can demonstrate an ability to develop the enterprise. Neither am I convinced that the submitted evidence is sufficiently robust to indicate a realistic prospect of them doing so within a 3 year period. It would therefore be inappropriate to grant permission for a temporary dwelling in this case.
39. Consequently, taking all the above into account I conclude that an essential need for a dwelling to accommodate a rural worker has not been demonstrated and the development is not justified. It therefore follows that the dwelling is not necessary to meet the needs of a rural enterprise and is tantamount to inappropriate development in the green wedge as described in PPW.

#### ***Effect on Openness***

40. PPW states that the purpose of a green wedge is *inter alia* to prevent the coalescence of settlements and assist in safeguarding the countryside from encroachment. Therefore, its openness and permanence are essential and important attributes of the green wedge<sup>10</sup>.
41. Openness is generally held to refer to the absence of development. The scale and massing of the proposed dwelling, when compared with the existing structures on part of the site, would be materially different. That is, the proposal would contrast greatly with the more modest buildings that currently exist. Comparatively, the effect on the openness of the green wedge would be greater. It would therefore have a more significant impact on the green wedge and the purpose of including land within it.
42. The appellants argue that the proposed dwelling would not be highly visible and would not have an adverse visual impact. However, for the reasons I have given the proposal would result in a loss of openness. In this context, it would represent an

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<sup>10</sup> Paragraph 4.8.5 of PPW



inappropriate form of development in the green wedge which would compromise its open character and function. In this regard, it would conflict with PPW and with LDP Policy ENV2(8).

43. PPW states that inappropriate development should not be granted planning permission except in very special circumstances where other considerations clearly outweigh the harm which such development would do to the green wedge<sup>11</sup>. I will conclude on this matter later in my Decision.

### **Other Considerations**

#### *Character and appearance*

44. For planning purposes, and in the context of LDP Policy ENV1, the site is in an area of countryside where new development is strictly controlled. It states that new development may be acceptable where it is necessary for *inter alia* appropriate rural enterprises where a countryside location is necessary for the development.
45. As already stated, I find that the proposed kennels and cattery represent an appropriate rural enterprise. I thus consider that it would be consistent with the rural character of the area. However, for the reasons I have already described, I do not find that the dwelling is justified as meeting the needs of a rural enterprise.
46. Allowing sporadic unjustified development in the open countryside would undermine its character. For this reason, it would conflict with the aspirations of local planning policy as expressed in LDP Policy ENV1 and with Policy SP2 which requires new development to have full regard to the context and character of its surroundings.
47. I do not dispute that the whole development may be sited such that it would not be highly visible in its surroundings set against the backdrop of the M4 embankment and that the design, form and scale of the wooden structures may be sympathetic in their appearance to the surrounding rural character. However, this matter does not overcome the fundamental concern I have regarding the principle of unjustified residential development of this site.

#### *Sustainable development*

48. LDP Policy SP2 also requires new development to promote good walking, cycling public transport and road connections within and outside the site to ensure efficient access.
49. The site lies outside the settlement boundary in an open countryside location, fairly remote from services, facilities and public transport. The dwelling is unjustified residential development at this location and cannot therefore benefit from the recognition in PPW that development in rural areas might not necessarily achieve all accessibility criteria.
50. I saw that the road serving the site has limited street lighting, no dedicated footways and limited forward visibility. It varies in width along its length narrowing to single file in places, and it has a series of tight 'S' bends as the lane rises with the steep topography of the area. I understand from the Highway Authority that it is used as a shortcut during peak traffic times on the strategic road network. A relatively high volume of traffic, some of which had to pull in to wait for oncoming traffic to pass, was evident at the time of my visit. In my view, it is not conducive to a safe and attractive

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<sup>11</sup> Paragraph 4.8.15 of PPW

route for pedestrians walking in the carriageway or for cyclists, particularly during the evenings or in inclement weather.

51. Based on the evidence before me, it seems that residents would be heavily reliant upon goods and services which are located further afield for their day-to-day needs, accessed via the road that I have described. Whilst I acknowledge that it may be possible to walk or cycle in some instances, such an arrangement would not adequately cater for the day-to-day needs of the future occupants of this development without significant reliance on the car as a means of travel.
52. In this context, the site would not constitute a sustainable location for new housing development insofar as it would rely heavily on the use of the private car and would not be accessible by a range of different transport modes. It would conflict with LDP Policies SP2 and SP3 which favour proposals which encourage sustainable practices, reduce the need to travel and which are located in areas highly accessible by means of transport other than the private car. It would also be at odds with the overall sustainability aims of PPW.

#### *Highway safety*

53. I have already described the highway conditions and note that there is no dedicated footway along the main access road serving the site.
54. As previously noted, PPW recognises that development in rural areas might not necessarily achieve all accessibility criteria. In the case of the rural enterprise, a number of the journeys associated with the use would be to transport animals to and from the premises. The appellants assert that it is likely that such journeys would rely heavily on the use of the private car rather than involving the use of public transport or walking / cycling. There is no evidence before me that leads me to any other conclusion in this regard. To this end, the Council accepts that the kennels / cattery use would be broadly acceptable in highway safety terms.
55. Rather, it is the pedestrian and vehicular movements associated with the dwelling with which the Council takes issue. It considers that any pedestrians wishing to access the development would need to walk in the carriageway, potentially resulting in vehicular and pedestrian conflict.
56. The Council has confirmed that there are no recorded personal injury accidents along this section of Pen y Cae Lane, although it considers that existing pedestrian movements are likely to be negligible. The appellant has not disputed this.
57. Nevertheless, for the reasons I have already stated, I do not consider that the road conditions are such that it would encourage a great deal of pedestrian movement. Hence, I have found the development to be unsustainable in terms of its accessibility by a range of different transport modes, including walking. It therefore follows that it is highly unlikely that the development would increase pedestrian movements to the extent that the risk of vehicular and pedestrian conflict would be significant such that it would be harmful in highway safety terms.
58. I also note that such a situation is not uncommon in rural areas where access to a dwelling attached to a rural enterprise is gained primarily over country lanes with no footways. Consequently, I do not find conflict with LDP Policies SP2 or SP3 in this regard.

### *Flood risk*

59. There is agreement between the parties that part of the site lies in Zone C2<sup>12</sup> as defined in Technical Advice Note 15 '*Development and Flood Risk*' (TAN 15). Paragraph 6.2 of TAN 15 identifies that new development should be directed away from Zone C and that highly vulnerable development and Emergency Services in Zone C2 should not be permitted.
60. Residential development constitutes highly vulnerable development. I accept that, in this case, a Flood Consequences Assessment (FCA) was carried out which informed the siting of the proposed temporary dwelling, cattery and kennels to the north of the site, outside Zone C2. On this basis, neither NRW nor the Council took issue with the proposal.
61. However, the access road to the site lies within flood Zone C2. TAN 15 advises that access routes should be operational under all conditions. Based on the additional information provided by the appellant, NRW confirmed that access from the north of the development would comply with the requirements of TAN 15 in the 1:100-year storm period but does not comply in the 1:1000-year storm period. Access from the south of the development complies with the requirement of TAN 15 in the 1:100-year storm period and the 1:1000-year storm period. Consequently, and in the event of planning permission being granted, it suggests that the south access be utilised in any emergency as the north involves crossing the river and a bridge which could be compromised by the flood waters.
62. In this context, I am satisfied that a safe means of access can be gained to and from the site in a flood event. Having regard to the information contained in the original FCA and the Supplementary Report the flood risk affecting the development site can be managed to a level which is acceptable for the nature of development proposed and therefore complies with the requirements of TAN 15.

### **Conclusion and Planning Balance**

63. In conclusion, I have considered the development as a whole as the parties agreed that both components are inextricably linked. An essential need for a dwelling to accommodate a rural worker has not been demonstrated and the development is not justified. I therefore find that the dwelling is not necessary to meet the needs of a rural enterprise and is tantamount to inappropriate development in the green wedge, which would have an adverse effect on its openness, as described by PPW. Moreover, there would be material harm to the character of the surrounding area and the site would not represent a sustainable location for new housing development, which also carries substantial weight against the development.
64. The appellants have cited other factors in support of the development, including economic benefit to the area by supporting other local rural businesses, environmental benefits by way of the reduced carbon footprint working on site rather than travelling to work and the benefit to the local community by contributing to sustaining services in the village. These matters carry moderate weight.
65. I have had regard to the material considerations cited in support of the proposal but, taken together, they do not outweigh the harm the scheme would cause. Consequently, there are not the very exceptional circumstances necessary to justify inappropriate development in the green wedge. I have also found there to be

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<sup>12</sup> Defined as areas of the floodplain without significant flood defence infrastructure.

insufficient justification for the proposed dwelling at this location which, in turn, would have an adverse effect on the character of the area and on the sustainability of the location. The appeal proposal would therefore be contrary to national and local planning policy.

66. 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.
67. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should be dismissed.

*Melissa Hall*

Inspector



## **APPEARANCES**

### FOR THE APPELLANT:

Mr R Hathaway	Planning Consultant
Mr G Leaver	Consultant
Mr D Hopkins	Appellant
Mrs R Hopkins	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Ms H Kemp	Principal Planning Officer
Mr R Matthams	Planning Policy
Ms E Elliot	Planning Policy
Mr L Tuck	Transportation & Development Control Officer
Mr R Morgan	Senior Transportation & Development Control Officer

### INTERESTED PERSONS:

Mr D Lewis	Councillor for Sarn Ward.
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## **DOCUMENTS**

- 1 The Council's notification letter of the appeal, dated 10 January 2018.
- 2 Aerial Photographs from 2013/14, 2015 and 2017.
- 3 Extract of Strategic Policy SP3 from the adopted Bridgend Local Development Plan.
- 4 Extracts from the Council's GIS – Penyfai and Aberkenfig Green Wedge layer.
- 5 Extract from NRW's DAM Maps showing the appeal site.

## **PLANS**

- A Elevations and floorplan of temporary log cabin dwelling.

## **DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE HEARING**

- 1 Flood Consequences Assessment Supplementary Report dated 4 February 2018.