



Appeal Decision

by Richard E. Jenkins BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 11/07/2023

Appeal reference: CAS-02244-P5N1M3

Site address: Land NW of Holly Lodge, Five Lane North, Caerwent, NP26 5PQ

- 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 Shannon Connolly against the decision of Monmouthshire County Council.
 - The application Ref: DM/2021/00738, dated 23 April 2021, was refused by notice dated 20 July 2022.
 - The development is proposed equestrian use including an amended access, a menage, stable block and barn/ store outbuilding.
 - A site visit was made on 3 May 2023.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. This appeal was originally linked with enforcement appeal Ref: CAS-02144-F2P1C5. However, I wrote out to the Council in respect of that enforcement appeal, outlining a number of concerns in respect of the Enforcement Notice. The Council has since acknowledged the issues raised in respect of that appeal and has withdrawn the Enforcement Notice. No further action shall therefore be undertaken in respect of the enforcement appeal. I shall therefore confine my reasoning to the appeal submitted under Section 78 of the 1990 Act, with Ref: CAS-02244-P5N1M3. The applications for an award of costs, made by the appellant against the Council, shall be the subject of a separate decision letter.
3. Article 5 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (hereinafter referred as the DMPO) states that, amongst other things, applications for planning permission must be accompanied by plans, drawings and information necessary to describe the development which is the subject of the application and that those plans or drawings must be drawn to an identified scale. Despite the application being validated and subsequently determined by the Council, it appears to be common ground that the proposal subject of the application failed to satisfy the requirements of the DMPO. Indeed, the Council refused planning permission for three separate reasons, with Reason No.3 stating that: "*The submitted plans are insufficient in*

terms of detail, clarity and accuracy and are therefore insufficient to support a positive recommendation of this application”.

4. The appellant’s Statement of Case acknowledges that the plans under which the application was refused were simply ‘*sketches*’ submitted to the case officer to seek general agreement on acceptable dimensions for the buildings. The appellant now seeks to resolve this issue through the amended plans submitted through the appeals process. Indeed, the appellant submits that the amended plans should form the basis of the determination of the appeal, contending that such an approach would not cause injustice and that it would, therefore, be consistent with the principles established through *Bernard Wheatcroft Ltd. v Secretary of State for the Environment* (JPL 1982, P37).
5. However, whilst the appellant is entitled to provide evidence to overcome objections raised at the planning application stage, Section 78(4BA) of the 1990 Act is clear that, once notice of an appeal under this section to the Welsh Ministers has been served, the application to which it relates may not be varied, except in such circumstances as may be prescribed by a development order. Article 26C of the DMPO goes on to clarify that, for the purposes of Sections 78(4BA) of the 1990 Act, the prescribed circumstance is that where an application to which the appeal relates contains a correctable error. In this case, the amended plans include buildings of a different scale and design to that considered at the application stage and, given the issues with the original drawings, the potential for differences in the exact siting cannot be verified. I am not therefore persuaded that the amended plans simply seek to correct an error on the previous plans.
6. I have fully considered the appellant’s arguments in respect of the issue of prejudice. However, parties not notified of the appeal would not have been alerted to the changes proposed. I have given thought to whether or not accurate plans could be secured through details to be submitted to and approved in writing by the Local Planning Authority (LPA). However, I have not been provided with suggested planning conditions to this effect and, in any event, I am concerned that such an approach would give rise to injustice. Indeed, whilst matters are frequently reserved via a planning condition in the case of an outline planning application, such reserved matters are subject to consultation at the time of a reserved matters application. Details to be submitted to and approved in writing by the LPA would not be scrutinised in the same manner and, given the interested party objections in this instance, I do not consider that such an approach represents an appropriate solution. Notwithstanding this, it is clear that the scheme has been varied since the determination of the application and therefore conflicts with the legislative provisions for planning appeals in Wales. I shall therefore consider the appeal on the basis of the plans used in the determination of the planning application.

Reasons

7. Having regard to the reasons for refusal set out in the Council’s Notice of Decision, I consider the main issues in the determination of the appeal to be: *whether the development would be acceptable in principle, having particular regard to the policy framework; and the effect of the development on the character and appearance of the area*. Given that the submitted plans lack the necessary clarity and detail, I am unable to conclude with any certainty whether there would be any material conflict with the aims of the adopted Monmouthshire Local Development Plan (LDP), or indeed the provisions of national policy. For this reason, and having considered all matters raised, I therefore find that the appeal should be dismissed.

Richard E. Jenkins

INSPECTOR