



Appeal Decision

by Paul Selby BEng (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 31.08.2023

Appeal reference: CAS-02429-J5S7Q2

Site address: Land to the west of Victoria Road, Gowerton SA4 3AB

- 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 EBM Ltd against the decision of the City and County of Swansea.
 - The application Ref 2019/2145/FUL, dated 13 October 2020, was refused by notice dated 28 October 2022.
 - The development proposed is Development of a drive thru restaurant (A3 use) and industrial unit (B2/B8 use) and associated works.
 - A site visit was made on 9 August 2023.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is whether the proposal would accord with local and national policy to avoid unacceptable risks from flooding.

Reasons

3. The appeal relates to a plot of land bounded by Victoria Road to the east and the riparian corridor of the Afon Lliw to the west. Land in commercial use lies to the south and north.
4. Policy ER 1 of the Swansea Local Development Plan (LDP) seeks to avoid unnecessary flood risk by assessing the implications of development proposals within areas susceptible to flooding and preventing development that unacceptably increases flood risk. LDP policy RP 5 states, amongst other things, that development will not be permitted in areas at risk of flooding unless it can be justified in line with national guidance and is supported by a technical assessment that verifies that the new development is designed to alleviate the threat and consequences of flooding. I consider these policies to be in general accord with TAN 15.
5. The latest Development Advice Map (DAM) indicates that the site is partly located within flood zone C2. Whilst not as up to date as the Flood Map for Planning, the DAM supports the current version of TAN 15 and I therefore afford it substantial weight.
6. A letter to Chief Planning Officers from the Welsh Government in January 2014 confirms that, for proposals in zone C, the 'justification tests' set out at paragraph 6.2 of TAN 15 are relevant. It recommends that these tests should be considered sequentially, so that a proposed development's consistency with tests (i), (ii), and (iii) is established prior to

consulting NRW on any detailed Flood Consequence Assessment (FCA) necessary to demonstrate compliance with test (iv). I have considered the proposal on this basis.

7. Tests (i) and (ii) indicate that development will only be justified if it is demonstrated that its location is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement; or that its location is necessary to contribute to key employment objectives supported by the local authority, and other key partners, to sustain an existing settlement or region. The appeal site lies between plots where commercial development has been permitted in recent years and within the settlement boundary designated by the LDP. Whilst TAN 15 identifies a 'local authority strategy' as the development plan for the area, other than lying within the main settlement boundary for Swansea the site is not subject to any other specific LDP designation or allocation. There is therefore little to indicate that this location is of key strategic importance to the LDP.
8. A submitted Economic Statement and Planning and Retail Statement note that the proposal would address an existing lack of small industrial units and drive-through restaurants in west Swansea. Consequently, the development would result in an economic and employment uplift, including the provision of around 27 to 45 FTE jobs following completion. Whilst undoubtedly a positive benefit, the contribution to the overall jobs and employment land targets identified in LDP policy PS 4 would be modest. The proposal would also not directly support the locational and skills-based employment objectives set out in policy PS 4 criteria (i), (iii) or (iv). There is therefore little to indicate that the appeal scheme, in this location, is necessary to assist or contribute to the overall LDP strategy or sustain the settlement of Swansea.
9. In my view the site's location and LDP status differentiates the appeal scheme from the proposal in appeal ref: APP/Y6930/A/21/3283015, to which my attention has been drawn. Whilst the full details of that other case are not before me, I note that that Inspector identified the site as lying within a designated town centre where the development contributed to the local policy objective of adding vibrancy to the area. Its location within a location of strategic local importance was thus key to the Inspector's findings that its benefits would outweigh the minor conflict with TAN 15. Whilst I acknowledge that the appeal proposal would generate additional activity and movement, the proposed uses would not be located within a district or retail centre or a strategic development site where such outcomes may be specifically pursued by the LDP.
10. The appellant notes that the Council has previously supported the redevelopment of the appeal site, most recently granting planning permission for a trampoline park in April 2016. This permission has since lapsed and, in common with the previous permission for a car sales hardstanding on a nearby site, it pre-dates the adoption of the current LDP and would therefore have been determined against different policies. The appeal site is not currently in active, viable employment use and there is little indication that it forms part of the LDP employment land bank as referred to in criterion (ii) of policy PS 4 or policy RC 10. Whilst the reasoned justification to policy RC 10 notes the importance of allowing some appropriate flexibility for windfall employment opportunities within settlement boundaries, it has not been demonstrated that the location is necessary to contribute to key employment objectives.
11. For the foregoing reasons I find that the proposal conflicts with tests (i) and (ii) of TAN 15. Having regard to its modest contribution to the targets identified in LDP policy PS 4, its economic and employment benefits would not outweigh the identified conflicts with TAN 15.
12. Test (iii) indicates that for development to be justified, the site in question should comprise previously developed land (PDL). Amongst other things, the definition of PDL

given in Planning Policy Wales (PPW) excludes land where the remains of any structure or activity have blended into the landscape over time so that they can reasonably be considered part of the natural surroundings. There is no dispute that the appeal site was once occupied by structures, but these have since been demolished. Although the land accommodates areas of tipped rubble and waste, it now appears largely undeveloped. Nonetheless, in strictly visual terms the site is plainly associated with the land in commercial use to the north and south and is clearly severed from nearby areas of evidently 'natural' character by Victoria Road and the Afon Lliw corridor. There is little evidence that it falls within the other exclusions listed on page 37 of PPW. Consequently, based on the submitted information and site circumstances I consider the site to meet the definition of PDL included in PPW.

13. The appellant has prepared a Flood Consequences Assessment (FCA) which was revised during the application process in response to concerns raised by Natural Resources Wales (NRW). The final iteration of the FCA indicates that some parts of the site would be at risk of flooding during extreme events, but that flood depths would be below 300mm. Having regard to the nature of the areas flooded and the affected uses and suggested mitigation measures, NRW has not objected to the proposal. I have no reason to find otherwise and conclude that the proposal would accord with test (iv) set out at paragraph 6.2 of TAN 15.
14. Compliance with tests (iii) and (iv) of TAN 15 does not, however, outweigh the conflict with tests (i) and (ii). Consequently, I conclude that the proposal would conflict with the flood risk objectives of LDP policies ER 1 and RP 5, and with the aims of TAN 15.
15. Several other matters have been raised, including from interested parties. Whilst I have considered these, none alters or outweighs my decision in relation to the main issue. I therefore conclude that the appeal should be dismissed.
16. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objectives to make our cities, towns and villages even better places in which to live and work, and to embed our response to the climate and nature emergency in everything we do.

Paul Selby

INSPECTOR