



## Appeal Decisions

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by BA(Hons), BTP, MSc, MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 06/03/2024

Appeal references: CAS-02887-H1K1W9 & CAS-02965-R5P0H5

Site address: Rowan Tree Cottage, Countryman Court, Heol Tynewydd, Bedwellty, NP12 0BJ

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- **Appeal A** 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 Luke Briggs against the decision of Caerphilly County Borough Council.
  - The application Ref 22/1054/RET, dated 19 December 2022, was refused by notice dated 13 February 2023.
  - The development proposed is described as 'Provision of new agricultural shed, hardstanding and access track. Raise ground levels throughout field including retaining land already raised'.
  - **Appeal B** is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval under the provisions of Part 6 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 as amended.
  - The appeal is made by Mr Luke Briggs against the decision of Caerphilly County Borough Council.
  - The application Ref 23/0147/NOTAF, dated 23 February 2023, was refused by notice dated 23 March 2023.
  - The development proposed is a steel portal framed shed.
  - A site visit was made on 16 January 2024.
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### Decisions

Appeal A: CAS-02887-H1K1W9

1. The appeal is allowed and planning permission is granted for the provision of a new agricultural shed, hardstanding and access track and raise ground levels throughout field including retaining land already raised on land adjacent to Rowan Tree Cottage, Heol Tynewydd, Bedwellty, Blackwood, NP12 0BJ in accordance with the terms of the application, Ref 22/1054/RET, dated 19 December 2022, subject to the conditions set out in the schedule to this decision letter at Annex A.

Appeal B: CAS-02965-R5P0H5

2. The appeal is dismissed.

### **Applications for costs**

3. Applications for costs have been made by the appellant against Caerphilly County Borough Council. These applications are the subject of separate Decisions.

### **Procedural and Preliminary Matters**

4. **Appeal A**, which relates to the application for planning permission, proposes the construction of a 9 x 18 metre agricultural building sited adjacent to the southern field boundary, a hardstanding and access track together with the raising of the ground levels throughout the field. The submitted drawings show that the walls of the building would be clad in profiled metal sheet over concrete blockwork and the roof covered in profiled metal sheet. At my site visit, I saw that hardcore has already been laid on the site of the proposed building and access. I have taken these works to constitute the commencement of development the subject of **Appeal A**, and I have therefore dealt with that appeal as one that seeks planning permission under s73A(2)(a) of the Act.
5. Meanwhile, **Appeal B**, which relates to the prior notification application, proposes the erection of what is described as a 'steel portal framed shed' only, which is essentially a building of the same scale, design and external appearance of that the subject of **Appeal A**, albeit it would be sited some 26 metres off the southern field boundary. Based on the timing of the prior notification application together with the written submissions to this appeal, it appears to me that the building's alternative siting came about as a result of the refusal of planning permission (for the development the subject of **Appeal A**) and the appellant's understanding of the limitations of permitted development i.e. a development would not be permitted if any part of that development would be within 25 metres of a classified road (para A.1 (g) of Part 6, Class A of The Town and Country Planning (General Permitted Development) Order 1995 ("the GPDO")).
6. In view of the above, I have assumed that the building's siting in the application for planning permission (**Appeal A**), which also seeks to retain the access and hardstanding that have been laid together with raising the ground levels in the field, is the preferred option. I shall therefore consider that appeal first.
7. I have treated the site plan on Drawing No. 3582-06 Rev E, which was submitted subsequent to the determination of the applications to show the layout and use of the building, as relating to **Appeal B** only since the siting of the building is consistent only with the prior notification application.
8. In respect of both appeals, the Council has confirmed in its statements that information submitted subsequent to the determination of the applications demonstrates that the building is reasonably necessary for the purposes of agriculture. There is no evidence before me that leads me to any other conclusions on this matter.
9. In this context, part of the Council's first reason for refusal in the determination of the planning application (**Appeal A**), that the building and associated access track and hardstanding is not justified, has been overcome.
10. In terms of the prior notification application (**Appeal B**), and whilst the Council may now accept that the development meets the definitional requirements in para. A, Class A, Part 6 of the GPDO, the Council continues to take issue with the siting of the building. I will deal with this matter later in this decision letter.

## Appeal A: Main Issues

11. Against the background that I have described, the main issues are:

- The effect of the development on the character and appearance of the area.
- Whether raising the ground levels would have an adverse ecological impact and increase the potential for the importation of contaminated material.

## Reasons

### *Character and appearance*

12. The appeal site consists of a field parcel adjoining a recently altered and extended dwelling known as Rowan Tree Cottage. A small group of dwellings (including Rowan Tree Cottage) extend in a linear arrangement to the north-west of the appeal site whilst the southern boundary of the site is defined by a hedgerow running alongside Heol Tynewydd. There is an existing field entrance gate leading from the highway beyond the south-eastern corner of the site.
13. I observed that hardcore has been laid to form an agricultural track and area of hardstanding to accommodate the proposed agricultural building and its access. The remaining field parcel was waterlogged at the time of my visit, reflecting the condition of the land shown in the appellant's submitted photographs, and which I understand is a result of inclement weather and poor drainage.
14. Although the Council accepts that the design of the proposed building is typical of that associated with agriculture, it continues to take issue with its siting insofar as it would not be grouped with existing buildings or well screened within the landscape given its prominent location alongside the public highway. To this end, it draws my attention to Policy CW19 of the adopted Caerphilly Local Development Plan (LDP) 2010 which *inter alia* requires rural development schemes to be consistent in scale and compatibility with their rural location and that new buildings should relate to an existing group of buildings. This is reiterated in the adopted Supplementary Planning Guidance (SPG) LDP10: Buildings in the Countryside, which advises that new agricultural buildings should be grouped with existing buildings, designed for the intended use, screened and located in a position where the least visual impact occurs.
15. In this case, there are no existing buildings or access tracks in the field parcel. Whilst the Council suggests that the proposed building could be grouped more closely with Rowan Tree Cottage, this would inevitably bring the agricultural building closer to the other dwellings in this small group; I would have reservations with such an approach insofar as the living conditions of the occupants of these neighbouring dwellings must also be protected. In any event, I must consider the acceptability of the siting of the building as proposed.
16. The SPG is clear that grouping new buildings in the countryside should be achieved 'where possible'. Mindful of the circumstances that I have described, the siting of the agricultural building adjacent to a boundary and close to a field entrance gate (and in the absence of existing buildings with which to group), is entirely logical, not least to minimise its visual impact. Its scale, form and design is typical of that found in a predominantly rural location such as this. Whilst I accept that it would be visible from the public highway above the vegetation along the boundary, or that the building and part of the hardstanding would be seen in glimpses from the field access with the highway, I do not consider that its siting could properly be described as 'unduly prominent' given the enclosed, verdant and winding nature of the single width country road from which it would be viewed. It is for

these reasons that I do not consider that it would have a visually jarring effect in this location where such development is to be expected. Indeed, I saw a similar agricultural building sited adjacent to a vegetated boundary with the highway some 300m to the east of the appeal site.

17. I acknowledge that the SPG advises that it would not be appropriate to introduce large areas of hard surface where these did not exist previously, albeit from my reading of the SPG that advice relates predominantly to the re-use of buildings where there should be the least amount of change possible to the external appearance. Here, the new building would cover much of the hardstanding, which is formed of hardcore that has been locally sourced in part. As an area of hardstanding around an agricultural building is not uncommon and, to my mind, would not be an unreasonable requirement to support the efficient functioning of the building and holding, I do not find it objectionable in this instance.
18. The Council has also raised concern regarding the laying of an extensive access track. However, I note the appellant's argument that the extent of the access track would be the same even if the building were to be sited closer to the dwelling but further away from the field entrance gate, as advocated by the Council. In any event, I do not consider that the access formed by hardcore and obscured from public view for the most part by a boundary hedge has such an adverse visual impact that refusal could be justified on this basis. Having regard to the above, I do not consider that the access track, would of itself, represent an alien feature on an agricultural holding such as this, or result in significant visual intrusion that would adversely affect the character and appearance of the area.
19. Turning to the effect on landscape character. The appellant has provided extracts from LANDMAP, confirming the Visual Landscape classification of the site as Moderate Value, Upland and Hill Slopes within the National Landscape Character Area of the South Wales Valleys, the Geological Landscape classification as Mountain and Upland Valley with Undulating Terrain and the Cultural and Historic Landscape classification as Rural Environment, Agricultural with Irregular Fieldscapes. I have been informed that the site does not form part of an AONB, National Park, SSSI, or otherwise protected landscape. In this context, the development would not interrupt the existing natural landscape features, such as field patterns or boundaries. Neither would the raising of the ground levels affect how the landform is read and understood in any meaningful way, with the upland and undulating terrain in the wider area remaining largely unaffected. Given that enhancement of the natural features could also be secured by a landscaping condition, I am satisfied the development would not have a harmful effect on the features and qualities of this landscape.
20. Consequently, and whilst there may be minor conflict with LDP Policy CW19 and the SPG insofar as the building would not be grouped with existing buildings, I do not find that it would offend the thrust of this policy or the aims of the development plan overall to ensure that new buildings in the countryside are compatible with their rural location.

#### *Effects of raising ground levels*

21. The Council's concerns relate to the lack of information regarding the proposed increase in ground levels and the resultant impact on landscape character (which has been dealt with above), land contamination and ecology.
22. Although I note the Council's argument in this respect, I am satisfied that sufficient information has been provided through the drawings, written submissions and consultation responses to enable an accurate assessment to be made. For example, whilst the requested sectional drawings through the site might have been helpful, I do not consider the absence of the same to mean that an assessment of the effect on landscape

character, based on raising of the levels across the site by some 1.2 metres as detailed in the submissions, cannot be undertaken.

23. I do not dispute that the application does not provide full details of the material to be brought onto the site for the purposes of raising the ground levels. Be that as it may, the consultation responses from the Council's Environmental Health service and Natural Resources Wales (NRW) confirms no objection to the development.
24. As I understand it, the applicant holds a licence to use screened hardcore to create tracks and hardstanding areas (which had been carried out at the time of my visit), but that raising the ground level for drainage purposes would require an environmental permit under the Environmental Permitting (England and Wales) Regulations 2016. Notwithstanding NRW's advice that the appellant must ensure full compliance with all elements of the exemptions that have been registered, and that any activities that are not in line with the exemption would constitute an illegal activity, it is evident that a permit would be required for the importation of any additional material required to raise the ground levels. As there is no need to duplicate the controls of other legislation, I do not consider that there is compelling evidence to suggest that any further imported material would be unsuitable for the intended use such that the withholding of planning permission on this basis is justified.
25. Turning to the potential ecological impacts of this element of the proposal. The appellant's submissions confirm that in raising the ground levels, the existing top soil would be stripped and stockpiled for re-use, free draining material would be brought onto the site, after which, the top soil would be reinstated and reseeded.
26. There is no evidence before me to suggest that the land has any particular ecological value. Rather, the appellant confirms that the site is an open field that has been in use for agricultural purposes for a number of years and that it is intended to have a limited amount of plant species restricted to those that are of benefit to grazing animals. Thus, the main loss would be common reeds which are dominant in this saturated ground.
27. I am aware that the Council's Ecologist has raised no objection to the application. Nevertheless, I am not convinced by the appellant's argument that the new hedges and ditches as well as improving the condition of the land would provide the biodiversity net gain required for planning applications, mindful of the need to fulfil the duties imposed by section 6 of the Environment (Wales) Act 2016 and the national planning policy requirements of PPW, noting the update to Chapter 6 of PPW which further reinforces this position. Neither can the provision of bat and bird boxes associated with an earlier planning permission at Rowan Tree Cottage be relied upon to secure biodiversity enhancement for the scheme that is before me.
28. This inevitably leads me to the conclusion that I have not been provided with an adequate level of detail in relation to ecological enhancement measures. Nevertheless, I am satisfied that a condition requiring details of biodiversity enhancement would secure the net benefit required by national planning policy.
29. In view of the above, I do not find that the development conflicts with LDP Policy CW2, the SPG or national planning policy in respect of these matters.

### **Conditions**

30. I have had regard to the Council's suggested conditions, and whether they meet the tests outlined in Welsh Government Circular 016/2014 '*The Use of Conditions for Development Management*'. Where necessary, I have adjusted the wording of the conditions in the interests of clarity and precision.

31. A condition stating that no goods, materials, plant or machinery shall be stored outside the building on the site is vague and has the potential to be unnecessarily onerous given the nature of the use and the wide range of associated paraphernalia that could be caught by such a condition.
32. Although the Council has suggested a condition requiring details of the importation of soils / hardcore, it has not explained why it would be reasonable to do so in light of NRW's permitting regime. Hence, I am not persuaded that there is a need to duplicate other legislative controls or that such a condition would meet the test of necessity.
33. Whilst it is necessary to require a landscaping scheme and a scheme for biodiversity enhancement, the wording suggested by the Council is imprecise and requires details prior to the commencement of development when works have already commenced. I have therefore amended the wording of the conditions accordingly.

### **Appeal B: Prior Notification**

34. The prior notification procedure under Schedule 2, Part 6, Class A of the GPDO gives the Local Planning Authority 28 days in which to decide whether or not it is necessary for it to give its prior approval to those details of development involving, amongst other things, new agricultural buildings. Paragraph A3 of Annex A to Technical Advice Note 6: Planning for Sustainable Rural Communities states that planning authorities should use the determination procedure to verify that the intended development does benefit from permitted development rights and does not require a planning application.
35. The Council issued its decision notice on the prior notification application stating that the proposed building would not be reasonably necessary for the purposes of agriculture and thus fell outside the parameters of permitted development set out in Schedule 2, Part 6, Class A of the GPDO. It nonetheless concluded in its delegated report that even if the development were to benefit from these rights, it would have '...concerns with the siting of the building'.
36. Notwithstanding that the Council subsequently accepted that the development would be reasonably necessary for the purposes of agriculture (and that it would therefore comply with Class A, Part 6 of the GPDO), the circumstances have since changed. That is, in light of my findings regarding the s78 the appeal the subject of **Appeal A** and given that there is no suggestion that a second agricultural building of the same scale, design and external appearance as that the subject of the planning permission is required, I cannot conclude that the development the subject of the prior notification application is reasonably necessary on the site. Accordingly, the proposal is not permitted development under the provisions of paragraph A, Class A of Part 6 to Schedule 2 of the GPDO.

### **Conclusion**

37. In conclusion, and having regard to all matters raised, **Appeal A** is allowed and planning permission is granted. 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 objective to make our cities, towns and villages even better places in which to live and work.
38. For the reasons I have already given, the proposal is not permitted development under the provisions of Class A of Part 6 to Schedule 2 of the Order and **Appeal B** is dismissed.

Ref: CAS-02887-H1K1W9 & CAS-02965-R5P0H5

*Melissa Hall*

INSPECTOR

**ANNEX A: Schedule of conditions subject to which planning permission is granted:**

1. The development shall begin not later than five years from the date of this decision.  
Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990.
2. The development shall be carried out in accordance with the following approved plans:  
Dwg No. 3582-04 Rev. D - Site Location Plan.  
Dwg No. 3582-05 Rev. A – Site plan as proposed.  
Dwg No. 3582-06 Rev. A – Shed details as proposed.  
Reason: To ensure the development is carried out in accordance with the approved plans submitted with the application.
3. Prior to the construction of the external surfaces of the development hereby approved details of the materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.  
Reason: In the interests of the visual amenity of the area in accordance with Policy CW2 of the adopted Caerphilly Local Development Plan.
4. Within 2 months of the date of this decision, a landscaping scheme shall be submitted for the written approval of the Local Planning Authority. The scheme shall include a timetable for its implementation and a five-year maintenance programme. The works shall be carried out and maintained in accordance with the approved scheme.  
Reason: In the interests of the visual amenity of the area in accordance with Policies CW2 and SP6 of the adopted Caerphilly Local Development Plan.
5. Within 2 months of the date of this decision, a lighting scheme shall be submitted for the written approval of the Local Planning Authority. That scheme shall indicate the type and positioning of luminaires, a plan indicating expected illuminance levels both on and off site and a timetable for its implementation. The lighting shall thereafter be installed and maintained in accordance with the agreed scheme and no additional lighting shall be installed without the approval of the Local Planning Authority.  
Reason: In the interests of nature conservation in accordance with Policies CW4 and SP10 of the adopted Caerphilly Local Development Plan.
6. Prior to the first use of the development hereby approved, a biodiversity enhancement scheme shall be submitted for the written approval of the Local Planning Authority. The scheme shall include a timetable for its implementation. The works shall be carried out and maintained in accordance with the approved scheme.  
Reason: In the interests of maintaining and enhancing biodiversity, in accordance with Section 6 of the Environment (Wales) Act 2016, Policy 9 of Future Wales, Planning Policy Wales, Technical Advice Note 5: Nature Conservation and Planning and Policies CW4 and SP10 of the adopted Caerphilly Local Development Plan.