
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 30/10/18

gan Siân Worden BA MCD DipLH
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad:

Appeal Decision

Site visit made on 30/10/18

by Siân Worden BA MCD DipLH MRTPI

an Inspector appointed by the Welsh Ministers

Date: 05/12/18

Appeal Ref: APP/M6825/A/18/3208210

**Site address: Land adjacent to Laugharne Primary School, Laugharne,
Carmarthenshire SA33 4SQ**

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 outline planning permission.
 - The appeal is made by Mr and Mrs Thomas against the decision of Carmarthenshire County Council.
 - The application Ref W/35450, dated 12 April 2017, was refused by notice dated 15 May 2018.
 - The development proposed is residential development including 42 no. dwellings.
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Decision

1. The appeal is allowed and outline planning permission is granted for residential development including 42 no. dwellings at land adjacent to Laugharne Primary School, Laugharne, Carmarthenshire SA33 4SQ in accordance with the terms of the application, Ref W/35450, dated 12 April 2017, and the plans submitted with it, subject to the conditions set out in the schedule at the end of this document.

Application for costs

2. An application for costs was made by Mr and Mrs Thomas against Carmarthenshire County Council. This application is the subject of a separate Decision.

Procedural matter

3. The application was made in outline including determination of access, landscaping and layout; the matters of appearance and scale were reserved for later determination.

Main Issues

4. I consider that the main issue in this case is the level and type of community benefits which must be provided in connection with the proposed development and consistent with Regulation 122 of *The Community Infrastructure Levy Regulations 2010* (CIL).
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Reasons

Background and history

5. The appeal site is a field on the western edge of Laugharne. Currently grassland, it is adjoined by woodland, a playing field with pitches and a stand for spectators, and a small residential development. The proposal is an outline scheme for 42 dwellings.
6. The site is allocated for housing in the Carmarthenshire Local Development Plan (LDP), adopted 2014. This establishes the principle of residential development for the site but planning permission must be sought, as it is here, to ensure that the proposed scheme complies with national policy, other LDP policies and the development plan as a whole.
7. The site has some history. As part of a larger site together with the adjacent playing fields it was granted planning permission for residential development in 2008. Having unsuccessfully been put forward as a housing allocation during the Unitary Development Plan (UDP) process, at the time of its submission this proposal was a departure from the development plan. It was thus justified and permitted on the basis of an accompanying community benefits package which was secured by a S106 obligation. The benefits package included the transfer of the playing field to a local sports club, some of which would then be transferred to the local primary school, and the donation of woodland to the Laugharne Corporation.
8. In contributing to the 2008 planning permission, the previous arrangements and agreements were also a factor in the allocation of the site in the LDP. The 2008 permission was live whilst the plan was in preparation but had lapsed by the time the LDP was adopted in late 2014. Nonetheless, the LDP inspector considered there were no insurmountable obstacles to the appeal site's development and it was allocated under Policy H1¹ with an indicative number of 42 dwellings. Policy H1 does not specify any additional requirements for the appeal site allocation but special provisions could have been applied if necessary. This is not to say, of course, that legitimate contributions towards any additional infrastructure which would be required to meet the needs of future occupiers, and which would be secured through planning obligations, should not be sought through the planning application process.

Planning obligation tests

9. In order for a planning obligation to constitute a reason for granting planning permission for a development proposal it must meet the three tests set out in CIL Regulation 122. These are that the obligation must be:
 - (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.
10. The playing field is not within the development limits of Laugharne which are identified on the LDP proposals map and the subject of Policy GP2. The objectives of the development limits include preventing inappropriate development in the countryside and preventing the coalescence of settlements, ribbon development or a fragmented development pattern². Whilst development within defined development limits will generally be permitted, the expectation seems to be that beyond them, as the playing field is, most types of development would be strictly controlled.

¹ site reference T3/1/h2

² LDP paragraph 6.1.12

11. In addition the playing field is identified as an area of existing open space which, under LDP Policy REC1, will be protected. Proposals for development which would cause the loss of such space would only be permitted in circumstances where alternative provision was made, the space was no longer needed, or no deficiency of open space resulted from the development. The playing field is also part of a designated Special Landscape Area (SLA) which should be protected, by LDP Policy SP14, in the interests of the natural environment.
12. In addition, the appellants attest that the proposed development would not affect the playing field which would continue to be leased to a local sports club at a nominal rate.
13. The Council's second reason for refusal is, in essence, that the lack of the previously-agreed community benefits' package fails to secure the long term future of the playing fields. There was also considerable objection to the proposed development on similar grounds. As set out above, the LDP provides three separate policy avenues for the protection of the playing field and the sporting activities which take place upon it. These will prevail for at least the life of the LDP and regardless of whether the land changes hands. A S106 obligation conferring the previously-agreed benefits is not, therefore, necessary to protect the playing field from development. As it is not necessary to make the development acceptable in planning terms the previous obligation does not meet the first test of Regulation 122.
14. The Council's committee report³ noted that discussions were taking place with the Head of Leisure in respect of whether there were any requirements for contributions towards open space. Despite an addendum to that report and a further report⁴ no more information was provided on this matter. No request was made by the Council for open space provision in connection with the proposed development, either in the form of play and sports areas or informal space such as the adjoining woodland. The previous community benefits, a large part of which would be the transfer of formal and informal open space, would not be directly related to the development and would not meet the second test of Regulation 122.
15. Although the proposed development of 42 houses would be significant in a settlement of this size, it would not generate a need commensurate with the scale of the improvements allowed for in the previous obligation. The previously agreed benefits would not, therefore, be fairly and reasonably related in scale and kind to the development and would not meet the third Regulation 122 test.
16. I have no doubt that the provisions of the earlier S106 obligation would be of significant benefit to the parties in receipt of the respective land transfers and also the wider community of Laugharne. Nevertheless, as demonstrated above it would not meet all three tests and, consequently, could not be given sufficient weight to constitute a legitimate reason for granting planning permission. In addition, that planning obligation is not before me now.

Current planning obligation

17. The appellant has provided a signed and dated planning agreement which makes the provisions towards affordable housing, education and highway improvements requested by the Council. The number of affordable units arises from targets set in LDP Policy AH1 and the education contribution is calculated using a formula based on

³ 17 April 2018

⁴ 15 May 2018

the numbers of pupils likely to arise from the proposed development. The highway improvements, by way of a pavement along the site's A4066 frontage and a contribution to driver feedback signs, are proportionate to the number of pedestrians and amount of traffic which would be generated by the scheme. The contributions are in line with the Council's Planning Obligations Supplementary Planning Guidance, which was adopted in 2014, and meet the CIL Regulation 122 tests.

18. The current planning obligation would therefore ensure that any negative consequences of the proposed development, including additional pressure on the town's facilities resulting from future occupiers, would be offset through financial contributions and other provisions. The proposed development is thus consistent with LDP Policy GP3 and the third paragraph of Policy SP16.
19. LDP Policy SP16 also encourages the provision of new, and the protection and enhancement of existing, community facilities. This part of it is, however, directed at proposals for new community facilities, such as those for education and training, and proposals which could result directly in the loss of existing facilities. Neither is the case in the appeal before me and much of this policy is not applicable to the proposal.

Other matters

20. The layout of the proposed scheme has been amended to distribute the affordable housing through the site. In addition there will be a single access point to the site for vehicles and a pedestrian link to give safe access to the nearby primary school. These amendments dispel other concerns with the original scheme.
21. A large amount of detailed information has been provided to supplement the cases of those objecting to the scheme and I have had consideration to it all. In reaching my decision, however, matters such as previous disputes, the ownership of the land, and the land's value, have carried little weight.

Conditions

22. In the light of Circular 16/2014 *The Use of Planning Conditions for Development Management* I have imposed conditions as suggested by the Council in its report to planning committee⁵. The commencement conditions relating to outline permissions and subsequent reserved matters applications are statutory. As landscaping is covered by this decision I have omitted it from the requirement for detailed plans which is particularly applicable to the reserved matters. The need for a detailed landscape scheme in line with the landscape masterplan⁶, approved by this decision, is covered by a separate condition.
23. The plans and documents list is for clarity and the landscaping conditions are to protect the appearance of the site and surrounding area, as is the condition requiring the details of levels; in respect of the later I have substituted the model condition. The drainage conditions will ensure that there is no harm to the health of existing and future occupiers or the wider environment. It is necessary for noise and dust to be controlled during the construction period to preserve the amenity of occupiers of the surrounding area.
24. The approval of a scheme of archaeological investigation is necessary because of the possibility that items of interest will be uncovered during construction; it will protect the historic environment. The approval of an ecological design scheme, which must

⁵ 17 April 2018

⁶ Drawing RS044-01-0

be adhered to as the development is implemented, is necessary in the interests of biodiversity. The conditions regarding the access road, estate road and footways; the control of obstructions to visibility; the visibility splays; and parking and turning facilities are all in the interests of highway safety for pedestrians and other road users.

Conclusion

25. The previous community benefits package, which was agreed prior to the appeal site's identification as a housing allocation in the development plan, would not meet the CIL Regulation 122 tests and would not be a legitimate reason for granting planning permission. Its absence, therefore, is not a reason to refuse planning permission. The planning obligation submitted in support of the proposed development is necessary to make the development acceptable in planning terms and meets the other CIL Regulation 122 tests. The benefits identified in the current planning obligation are therefore those that should be provided by the proposed development.
26. 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 of supporting safe, cohesive and resilient communities.
27. For the reasons given above I conclude that the appeal should be allowed.

Síân Worden

Inspector

Schedule of Conditions

- 1) The development shall begin either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 2) Development shall not commence until detailed plans of appearance and the scale of each building (the reserved matters) stated in the application have been submitted to and agreed in writing by the Local Planning Authority.
- 3) The development shall be carried out in accordance with the following approved plans and documents, unless otherwise stipulated by conditions:

1:2500 Location Plan (LP-01)	received 25 April 2017
1:500 Site Layout Plan and Scale Parameters (696/01C)	received 23 March 2018
1:500 Proposed Drainage Strategy Plan (C-SK01C)	received 23 March 2018
1:500 Proposed Landscape Concept (RS044-01-0)	received 23 March 2018
1:250 Site Sections (696/02B)	received 23 March 2018
Pollution Management Plan prepared by Sauro Architectural Design	dated 7 May 2017
Air Quality Assessment (Section 7) by WYG	dated March 2017
Ecological Appraisal Report (Section 5 – Recommendations and Conclusions) by I & G Ecological Consulting	dated February 2017
Archaeological Appraisal (Section 5) by Archaeology Wales	dated April 2017
Transport Statement by LvW	received 23 March 2018

- 4) Any reserved matters application shall include a Detailed Landscaping Design Scheme that accords with the Proposed Landscape Masterplan (drawing RS044-01-01) for written approval. The approved scheme shall be fully implemented in the first planting season following commencement of the development. Any new landscape elements constructed, planted or seeded; or existing landscape elements retained; in accordance with the approved Detailed Landscape Design Scheme which, within a period of 5 years after implementation (with the exception of the new hedgerow along the A4066 which shall be retained in perpetuity) are removed; die; become diseased; damaged or otherwise defective, to such extent that, in the opinion of the Local Planning Authority, the function of the landscape elements in relation to this planning approval is no longer delivered, shall be replaced in the next planting or seeding season with replacement elements of similar size and specification.
- 5) No development shall commence until details of existing ground levels, including those of adjacent properties, and proposed finished ground and floor levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

- 6) The dwellings hereby approved shall not be occupied earlier than 31 March 2019 unless the upgrading of the Laugharne Wastewater Treatment Works has been completed and written confirmation of the completion of works from the Local Planning Authority is received prior to the occupation of any dwelling.
- 7) No development shall commence until a drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the disposal of foul, surface and land water, and include an assessment of the potential to dispose of surface and land water by sustainable means. Thereafter the scheme shall be implemented in accordance with the approved details prior to the occupation of the development and no further foul water, surface water and land drainage shall be allowed to connect directly or indirectly with the public sewerage system.
- 8) No development shall take place until a scheme for the control of noise and dust during construction works has been submitted to and approved in writing by the Local Planning Authority. The scheme shall comply with the guidance found in the BS5228: Noise Vibration and Control on Construction and Open Sites. The development shall be carried out in accordance with the approved scheme.
- 9) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority. The written scheme of investigation shall be undertaken by a qualified archaeological contractor and shall include details on how the developer intends to mitigate against any adverse effects on the historic environment and shall include a phased archaeological investigation commencing with a geophysics survey of the site. The development shall be carried out in accordance with the approved scheme.
- 10) No development or site clearance shall take place until an appropriate and comprehensive Ecological Design Scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall deliver detailed design proposals which effectively integrate appropriate site specific landscape, ecological and biodiversity objectives and functions. The scheme shall be in compliance with the principles of the landscape and ecological information submitted with the following approved application documents section 5 of the Ecological Appraisal Report by I & G Ecological Consulting dated February 2017 and relevant guidance as provided by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.
- 11) Prior to its use by vehicular traffic, the new access road shall be laid out and constructed with 5.5 metre carriageway, 1.8 metre footways, and 8.0 metre kerbed radii at the junction with the A4066 road.
- 12) There shall at no time be any growth or obstruction to visibility over 0.9 metres above the adjacent carriageway crown, over the site's whole A4066 road frontage within 2.4 metres of the near edge of carriageway.
- 13) There shall at no time be any growth or obstruction to visibility over 0.6 metres above the adjacent carriageway crown, over the site's whole estate road frontages within 2.0 metres of the near edge of carriageway.
- 14) Prior to any use of the new access by vehicular traffic, a visibility splay of 2.4 metres x 59 metres shall be formed and thereafter retained in perpetuity, either side of the centre line of the access road in relation to the nearer edge of the

A4066 carriageway. In particular there shall at no time be any growth or obstruction over 0.9m within this splay area.

- 15) A scheme of parking and turning facilities shall be provided as part of any reserved matters submission. The approved scheme shall be fully implemented prior to any part of the development the subject of that reserved matters submission being brought into use, and thereafter shall be retained, unobstructed, in perpetuity. In particular, no part of the parking or turning facilities is to be obstructed by non-motorised vehicles.
- 16) Prior to the occupation of any of the dwellings herewith approved, the required access roads and footways from the existing public highway shall be laid out and constructed strictly in accordance with the plans herewith approved, to at least the base course levels, and with the visibility splays provided.
- 17) Prior to any use of the estate road serving plots nos.2-13 by vehicular traffic, a visibility splay of 2.0 metres x 25 metres shall be formed and thereafter retained in perpetuity, either side of the centre line of the access road in relation to the nearer edge of the main estate road carriageway. In particular there shall at no time be any growth or obstruction over 0.6m within this splay area.