
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 12/01/21

gan Clive Nield, BSc (Hon), CEng,
MICE, MCIWEM, C.WEM

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 10th February 2021

Appeal Decision

Site visit made on 12/01/21

by Clive Nield, BSc (Hon), CEng, MICE,
MCIWEM, C.WEM

an Inspector appointed by the Welsh Ministers

Date: 10th February 2021

Appeal Ref: APP/Q6810/A/20/3257139

Site address: Land near Rhes Nantlle, Nantlle, Caernarfon, LL54 6BE

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 George Denham against the decision of Gwynedd Council.
 - The application Ref: C17/1153/22/AM dated 22 November 2017, was refused by notice dated 4 August 2020.
 - The development proposed is the erection of 4 affordable homes (total floor space 400-450 square metres), including an entrance and car parking.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal was originally made against the failure of the Council to determine the application within the prescribed time. However, the Council then refused the application during the period of dual jurisdiction, and so the appeal is now considered to be against that refusal.
3. The application was for outline permission with the appearance, landscaping and layout of the development reserved for future consideration.
4. An application for costs was made by Mr George Denham against Gwynedd Council. This application is the subject of a separate Decision.

Main Issues

5. The key development plan policy in this case is Policy TAI 16 of the Gwynedd and Anglesey Joint Local Development Plan 2011-2026, adopted in July 2017 (the JLDP). The policy supports proposals for 100% affordable housing schemes on suitable sites immediately adjacent to development boundaries where it is demonstrated that there is a proven local need for affordable housing that cannot be delivered within a reasonable timescale on a market housing site inside the development boundary.
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6. The supporting supplementary planning guidance on affordable housing, adopted in April 2019, provides further relevant guidance, including that such a scheme should meet the needs of local people in perpetuity and have an occupancy cascade mechanism to ensure occupants will always be found for the affordable housing.
7. Taking into account the requirements of the policy and guidance, I consider the main issues in this case to be whether or not there is a local need for the development of 4 affordable dwellings on an exception site, and whether or not the proposed dwellings would be affordable on initial occupation and in perpetuity.

Reasons

Local Need for Affordable Housing

8. The Appellant says the proposed development would meet local need for 2 and 3 bedroom affordable housing but provides little in the way of convincing evidence to demonstrate this. **He refers to the Council's Annual Monitoring Report** which shows the number of completions in the County to be below target for affordable housing over the period 2015-2018; he provides survey information from a local housing agency on the numbers of people looking for housing in the area; and he provides details of house sales in Nantlle over the past 3 years. Whilst these indicate a potential market for the proposed houses, they do not demonstrate a local need for affordable housing.
9. The Appellant says that, when the application was first submitted, the Council indicated agreement that there was a local need. That may or may not have been the case, but latterly the Council has not accepted that there is such a local need.
10. **The Council's supplementary planning guidance on affordable housing** also says that, in assessing the local need for new affordable housing, Applicants will need to demonstrate that opportunities within the existing housing stock have been fully considered and discounted. That exercise has not been carried out. Indeed, the **Appellant's own evidence on** recent house sales in the village shows that half of them were at prices that would be affordable for people of modest incomes.
11. As the proposal is for the development of an exception site outside the development boundary, it is particularly important to demonstrate that there is a local need for the affordable housing proposed. The provision of market housing on the site would be contrary to development plan policy.
12. In this case, I do not consider it has been demonstrated that there is such a local need. Thus, the proposal would conflict with JLDP Policy TAI 16.

Affordability of Proposed Houses

13. Turning to the second main issue, **the Council's refusal said it had not been convinced** that the proposed dwellings would be affordable both initially and in the long-term, which is another important requirement of the policy and the supplementary guidance, particularly for an exception site.
14. Over the lengthy period during which the application was under consideration the Appellant submitted several viability assessments which have not satisfied the Council. He has also submitted an open market valuation of the proposed houses, prepared by an independent valuer, which valued the houses at £185,000 and £165,000 for the 3 and 2 bed houses respectively. These provide the benchmark for affordability, subject to a discount for the limited market of people meeting the affordable housing criteria. The supplementary planning guidance provides advice on calculating the acceptable cost of an affordable house in the area (based on the median income and a 10%

deposit) for someone on a modest income. That is estimated to be some £112,200, so substantial discounts on the open market values would need to apply both initially and in the future.

15. **The Appellant's initial** assessment provided estimated costs that gave little room for error in demonstrating viability and a very low return on investment. As a result, the proposal now is that the 4 houses would be self-build units, which would benefit from reduced development costs. The Appellant submits that these would now meet the requirement for purchase costs to be substantially less than the open market values. However, this means of development would rely on finding people who both meet the criteria to be eligible for local affordable housing and have the skills and finance (for a sizeable deposit) to be able to carry out the self-build developments.
16. The Appellant has not indicated that anyone who meets these criteria has been identified, and nothing I have read gives me confidence it could be achieved. The viability of the scheme depends on all 4 plots being developed in accordance with the proposed model. I have no doubt it would be an attractive proposition for market housing but am not convinced it would be feasible for affordable housing.
17. My conclusion on affordability is that there is too much uncertainty that the proposed units would meet the specified requirements for affordable housing. Thus, they would fail to comply with Policy TAI 16 and the supporting supplementary guidance.

Overall Conclusion

18. Overall, my conclusion is that it has not been demonstrated that the proposed development would meet an identified local need for affordable housing or that it would be affordable for someone of modest income. Consequently, it would conflict with JLDP Policy TAI 16 and the supporting adopted supplementary planning guidance.
19. I am also mindful that the Appellant has not provided an appropriate Section 106 Undertaking or any other means of ensuring that, if planning permission was granted, the scheme would include the necessary provisions to ensure that it would meet the needs of local people for affordable housing both now and in perpetuity. It is a requirement of the supplementary planning guidance that an occupancy cascade mechanism should be included to ensure that suitable occupants will always be found in the future for affordable dwellings.
20. I am aware that the Appellant has had some dealings with the Council towards the preparation of such a document. However, a decision on an appeal cannot be made on a provisional basis if a completed section 106 Undertaken has not been provided. Thus, even if I had not reached the conclusions above, I would have dismissed the appeal because of the lack of a Section 106 Undertaking.
21. 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 building resilient communities.**

Clive Nield

Inspector

Penderfyniad ar gostau

Ymweliad â safle a wnaed ar 12/01/21

gan Clive Nield, BSc (Hon), CEng,
MICE, MCIWEM, C.WEM

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 10th February 2021

Costs Decision

Site visit made on 12/01/21

by Clive Nield, BSc (Hon), CEng, MICE,
MCIWEM, C.WEM

an Inspector appointed by the Welsh Ministers

Date: 10th February 2021

Costs application in relation to Appeal Ref: APP/Q6810/A/20/3257139

Site address: Land near Rhes Nantlle, Nantlle, Caernarfon, LL54 6BE

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 and 322C and Schedule 6.
 - The application is made by Mr George Denham for a full award of costs against Gwynedd Council.
 - The appeal was against the refusal of planning permission for the erection of 4 affordable homes (total floor space 400-450 square metres), including an entrance and car parking.
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Decision

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

Submissions for Mr George Denham

2. The costs application was submitted in writing within the Appeal Support Statement.

Response by Council

3. The Council has made no response to the costs application.

Reasons

4. The Section 12 Annex to the Development Management Manual (Awards of Costs) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
 5. The Applicant submits that the Council has acted unreasonably in terms of the time it took to reach its decision and its numerous requests for proof that affordable houses could be built on the appeal site. The Council did not ask for any extension of time beyond May 2019, and the Applicant considers that the Council failed in its duty to manage development appropriately.
 6. Whilst no specific reference has been made to the Section 12 Annex of the Development Management Manual (DMM), I have had regard to the guidance it provides, particularly to the examples of circumstances where a local planning authority may be considered to have acted unreasonably. One of those is: "**Failure to**
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determine an application within the statutory time limits, where it is clear that there was no substantive reason to justify delaying the determination of the application”.

7. In this case, the Council was of the opinion that there were substantive reasons for refusal of the application and, during the period of dual jurisdiction, did resolve to refuse it. I have considered the merits of the appeal, and I have reached the same conclusion on those reasons for refusal. Thus, even if the Council had reached its decision earlier, the Appellant would have incurred the same costs for an appeal.
8. Furthermore, whilst the Appellant **argues that the Council’s behaviour led to unnecessary delay in the determination of the application**, he did not avail himself of the option to appeal against non-determination of the application much earlier. In addition, the DMM advises that **“Awards of costs cannot be made for indirect losses, such as the delay of planning permission”**.
9. Overall, although the Council’s **consideration of the application extended over a protracted period of time**, my conclusion is that it did not act unreasonably within the scope of the provisions for an award of costs and did not cause the Appellant to incur unnecessary expense in the appeal process.
10. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the Section 12 Annex to the Development Management Manual, has not been demonstrated.

Clive Nield

Inspector