

**BRECON BEACONS NATIONAL PARK AUTHORITY
PLANNING, ACCESS & RIGHTS OF WAY COMMITTEE**

SUMMARY OF APPEALS

Appeal Decision (Development Control)

Ref	Date	Appellant	Dev/Location	Description of Development
13/09630/ FUL	07.02.2014	Mr Ian Pickering	Lleuad Newydd Station Road Clydach NP7 0LY	Proposed detached dwelling. Appeal Dismissed - See Appendix A Awards of costs refused - See Appendix B

BRECON BEACONS NATIONAL PARK AUTHORITY
PLANNING, ACCESS & RIGHTS OF WAY COMMITTEE

SUMMARY OF APPEALS

APPEAL LODGED (ENFORCEMENT)

Ref	Date	Appellant	Dev/Location	Description of Development
ENF/13/01 246/OD	10.06.2014	Mr Mark Phillip Evill	Ravenstone 2 Woodland Park Penderyn Hirwaun Rhondda Cynon Taff CF44 9TX	Appeal against an Enforcement Notice served on the 1 st April 2014. Nature: Unauthorised operational development works for the erection of a fence and gate measuring 1.8 metres from ground level adjacent to a classified highway.



Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 29/05/14
Ymweliad â safle a wnaed ar 29/05/14

gan Iwan Lloyd BA BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 27/06/14

Appeal Decision

Hearing held on 29/05/14
Site visit made on 29/05/14

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 27/06/14

Appeal Ref: APP/P9502/A/14/2213204

Site address: Lleuad Newydd, Station Road, Clydach, Abergavenny

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 planning permission.
- The appeal is made by Mr Ian Pickering against the decision of Brecon Beacons National Park Authority.
- The application Ref 13/09630/FUL, dated 5 June 2013, was refused by notice dated 9 August 2013.
- The development proposed is a detached dwelling.

Decision

1. The appeal is dismissed.

Application for costs

2. At the hearing an application for costs was made by Brecon Beacons National Park Authority against Mr Ian Pickering. This application is the subject of a separate decision.

Preliminary matters

3. The Brecon Beacons National Park Authority Local Development Plan (LDP) was adopted as the development plan for the area on 17 December 2013. The Authority's refusal of planning permission was in August 2013 and was based on planning policies of the Brecon Beacons National Park Authority Local Plan (LP) adopted in May 1999, and Brecon Beacons National Park Unitary Development Plan (UDP) (2007) which was stopped short of adoption, but was approved for development control purposes.
4. The Authority's decision to refuse was based on character and appearance and the adequacy of the information relating to highway and pedestrian safety. The principle of the development was not at issue. However, since the adoption of the LDP, Clydach is no longer a settlement which supports general market housing and is defined as a Level 4 settlement under LDP Policy LGS LP1, which is identified for limited growth, and criterion 1 of Policy LGS LP2 refers to the creation of new dwellings to meet an identified local need for affordable housing.

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Appeal Decision APP/P9502/A/14/2213204

5. The Appellant's case is that the appeal should be considered against the Authority's refusal reasons based on the preceding UDP and LP, and the principle of the development should not be considered in this appeal.
6. The start date for the appeal was the 7 February 2014.

Main Issues

7. Having regard to the fore-mentioned circumstances, I consider the main issues are as follows:
 - the effect of the development on the character and appearance of the area having regard to the provisions of the development plan, and
 - the effect of the proposal on highway safety, and
 - whether there are any other material considerations which would outweigh any harm to the character and appearance of the area having regard to the provisions of the development plan.

Reasons

Character and appearance

8. The appeal site forms part of the garden of Lleuad Newydd and slopes down from this dwelling towards the stream to the east and the corner of Station Road to the north. Station Road slopes down from south to north and traverses the western boundary of the appeal site. On the opposite side of Station Road is the Clydach Ironworks Scheduled Ancient Monument (SAM).
9. Planning Policy Wales Edition 6 (PPW) set out in paragraphs 2.1.1-2.1.2 that upon adoption the LDP will be the statutory development plan for the local planning authority area, and it will supersede the existing development plan either the unitary development plan, structure or local plan. LDPs should provide a firm basis for rational and consistent decisions on planning applications and appeals. The guidance refers to Section 38(6) which requires that regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts, and the determination must be made in accordance with the plan unless material considerations indicate otherwise. Although the adoption of the LDP came after the Authority's decision and changed the planning status of the site, PPW advice and the legislative requirement of Section 38(6) provide that the appeal must be considered against the adopted development plan which is the LDP in this case.
10. The Appellant argues that there is no proven local need for affordable housing in the settlement and that the Rural Housing Enabler has indicated there is no identifiable need. The Appellant argues that where there is no proven local need LDP Policies LGS LP2 and SP6 would not allow the possibility of a general market dwelling. The Appellant also points out that Clydach is within the Heads of the Valley and Rural South submarket area where no affordable housing contribution is needed.
11. However, there is no evidence submitted to corroborate the Appellant's claims on local housing need. The Authority consider there is a housing need across the National Park area, but the onus is on the Appellant to demonstrate otherwise, and there is no submitted evidence to indicate a decision contrary to the requirements of LDP Policy LGS LP2. LDP Policy SP6 would only permit affordable housing in a Level 4

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Appeal Decision APP/P9502/A/14/2213204

settlement, and affordable housing contributions would only be applicable to larger settlements and not to Level 4 settlements as set out in LDP Policy 28.

12. The significant policy change which has occurred in the village mean that the principle of the development is at issue, and a large 4 bedroom dwelling which otherwise would have been accepted in principle under the superseded development plan is now in conflict with the adopted development plan for the area. All proposals for development within limited growth settlements must demonstrate how it will contribute to the strategy in terms of its impact on environmental and community infrastructure as set out in LDP Policy LGS LP2 and linked policy LGS LP3.
13. Turning to the issue of the design in its local context, I do not consider that the proposal would be inappropriate in terms of scale, form, design, layout and materials. The proposal logically addresses the context of the site by its orientation facing down towards the corner position of the plot and taking advantage of the local topography. The scale of the building is large but its visual prominence is lessened by the step-down in levels and height of roofs from Lleuad Newydd to the appeal development, and by the proposed set-back layout and the significant tree screen adjoining the highway boundary. The set-back layout of the recessed wing of the dwelling facing west would not give rise to an unduly complicated appearance, and I therefore consider that the proposal maintains the quality and character of the Park's natural beauty. I consider that the proposal would not conflict with LDP Policies 1 and SP1.
14. The development is some 100m from the SAM and is separated from it by Station Road. I therefore concur with the Authority that the proposal would not adversely affect this historic asset and its setting.
15. Notwithstanding my favourable conclusions in relation to the design of the proposal, it does not outweigh the conflict with LDP planning policy in restricting new residential development in limited growth settlements to meet an identified local need for affordable housing. The proposal is a general market dwelling and no evidence has been submitted to adequately demonstrate that there is no local need for affordable housing. The development would harm the character and appearance of the area having regard to the provisions of the development plan, since it has not been justified in this particular location.

Highway safety

16. The proposal would alter the existing vehicular access on the corner of Station Road to provide a pedestrian entrance, and would create a new vehicular access adjoining the existing access to Lleuad Newydd. The Highway Development Engineer did not object to the evidence presented about the adequacy of the vision splay provided they could be achieved since the vision splay south shown as 90m crosses third party land. However, the land in question is part of the frontage of Lleuad Newydd which is in the Appellant's control. I am therefore satisfied that a planning condition could be imposed to ensure that work is carried out to achieve this required visibility and maintained free from obstruction. This issue and the concern about the highway drain are not matters which would impede the development in relation to matters of highway safety.

Conclusions

17. Notwithstanding my favourable conclusion for the Appellant on highway safety this matter does not outweigh my conclusion on the first issue. No other material consideration of significant weight was raised or that has not already been dealt with

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Appeal Decision APP/P9502/A/14/2213204

under the first issue. The development does not therefore accord with the provisions of the development plan.

18. I therefore conclude that the appeal should be dismissed.

Iwan Lloyd

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr G Powell BA (Hons)	Appellant's agent
Mr I Pickering	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Greaney MRTPI	Principal Planning Officer
Mr C Lowe Civ Eng	Highway Development Engineer

DOCUMENTS SUBMITTED AT THE HEARING

1. Notification letter
2. LDP Policies LGS LP2, SP6 and 28
3. LDP Proposal maps
4. Suggested highway conditions

APPENDIX II



Penderfyniad ar gostau

Gwrandawriad a gynhaliwyd ar 29/05/14
Ymweliad â safle a wnaed ar 29/05/14

gan Iwan Lloyd BA BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 11/7/14

Costs Decision

Hearing held on 29/05/14
Site visit made on 29/05/14

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 11/7/14

Costs application in relation to Appeal Ref: APP/P9502/A/14/2213204
Site address: Lleuad Newydd, Station Road, Clydach, Abergavenny

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 76, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Brecon Beacons National Park Authority for a full award of costs against Mr Ian Pickering.
- The hearing was in connection with an appeal against the refusal of planning permission for a detached dwelling.

Decision

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

The submissions for Brecon Beacons National Park Authority

2. The costs application was made orally at the hearing and a full award is sought. The Authority refers to paragraphs 3 and 5 of Annex 3 of Circular 23/93. The Authority contends that the appeal was unreasonable and that the Appellant has not produced substantial evidence to support the contention that there are material considerations which would justify an exception to the policies in the development plan.
3. Policies LGS LP1 and LGS LP2 of the Brecon Beacons National Park Authority Local Development Plan (LDP) define the village as a Level 4 settlement which is identified for limited growth. The basis of the LDP policies indicate that in Level 4 settlements the creation of new dwellings to meet an identified local need for affordable housing is supported but not general market housing. The Authority asserts that no evidence has been provided to show that there is no need and to support the contention that there are material considerations that would outweigh the development plan.
4. The Authority contends that the appeal is unreasonable because it must have been obvious from planning policy that it had no reasonable prospect of success. The Authority refers to national guidance on LDPs, where it is indicated that the development plan becomes operative from the date of its adoption. Upon adoption the planning policies for the area restricted development to affordable housing and without evidence of need there was no real prospect of the appeal succeeding. The fact that Clydach is within the Heads of the Valley and Rural South submarket area

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Costs Decision APP/P9502/A/14/2213204

where no affordable housing contribution is needed is irrelevant since such contributions do not relate to Level 4 settlements.

5. The Authority's reasons for refusal are not disputed in the cost application. The change of policy came about following the adoption of the LDP in December 2013. The Appellant could have appealed in the 4 month period prior to the LDP adoption and have his appeal considered under the previous planning policy regime.
6. The Authority has incurred unnecessary expense in officer time in the preparation for the appeal. Such unnecessary expense would not have occurred had the appeal been made in August 2013, when the Authority's decision was issued. The Authority drew attention to the Appellant of the change of policy when the appeal was lodged that affordable housing in a limited growth settlement was a relevant consideration in the determination of the appeal.
7. Although the Authority initially applied for a full award of costs no particular application is sought in relation to the two reasons for refusal on character and appearance and highway safety. A partial award of costs is therefore sought limited to the LDP planning policy issue.

The response by Mr Ian Pickering

8. The response was made orally at the hearing. The appeal should be considered against issues raised in the reasons for refusal and not against matters of principle. It is considered that the LDP is not the prevailing document in this appeal.
9. In relation to the question of an identified need, the village is located in an area where no affordable housing contribution is needed. Given there is no identified need the development is not contrary to policy. In any event, it is requested that the appeal is determined in relation to the Brecon Beacons National Park Unitary Development Plan (UDP) (2007), as it is an appeal against the Authority's decision in August 2013.
10. Many of the Authority's statements on LDP policy are irrelevant since the appeal site is located in an area where an affordable housing contribution is not required. Similarly the time spent by the Authority in preparation is also irrelevant, and so is the Authority's letter warning the Appellant of the policy change, because no affordable housing contribution is needed in the area.

Reasons

11. Circular 23/93 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.
12. I have concluded in the decision that the operative development plan is the LDP for the determination of the appeal and that LDP planning policies seek affordable housing in a limited growth settlement. I also concluded that there was no evidence submitted to corroborate the Appellant's claims of no identifiable local housing need for affordable housing. The appeal site is located in an area where no financial contribution is needed for affordable housing. However, this mechanism as a contribution for affordable housing does not relate to limited growth settlements. This is set out in my decision having regard to relevant LDP planning policies.
13. However, paragraph 3 of Annex 3 of Circular 23/93 indicates that an appeal may be considered unreasonable where the planning authority can show that their determination of a planning application for a proposed development is in accordance

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Costs Decision APP/P9502/A/14/2213204

with an operative plan and they have substantiated this in their reasons for refusing permission and in their written statement on an appeal.

14. Given the timing of events, the Authority determined the planning application in accordance with the preceding development plan and did not focus its reasons for refusal on matters of principle. The Appellant therefore exercised his statutory right of appeal in a reasonable manner. Matters of principle were introduced later and whilst fore-warned by the Authority, the Appellant could have produced evidence on the day of the hearing on whether there was an identifiable need. The fact that I was not persuaded that the evidence was compelling, did not alter the point that it was a reasonable appeal in relation to the reasons why it was refused planning permission.
15. The general conditions for an award for unreasonable behaviour against the Appellant has not been met, having regard to paragraph 6(2) of Annex 1 and paragraphs 3 and 5 of Annex 3 of Circular 23/93. Given my conclusions on the issue of unreasonable behaviour, there is no need for me to go on and consider whether there has been a waste of expense on the part of the Authority in the appeal process.
16. I therefore find that unreasonable behaviour as described in Circular 23/93 has not been demonstrated. A full or partial award is not therefore justified in this case.

Iwan Lloyd

INSPECTOR