
Penderfyniad ar yr Apêl

Ymchwiliad a gynhaliwyd ar 08 & 09/03/16
Ymweliad â safle a wnaed ar 08/03/16

gan Aidan McCooey BA MSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 15.04.16

Appeal Decision

Inquiry held on 08 & 09/03/16
Site visit made on 08/03/16

by Aidan McCooey BA MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 15.04.16

Appeal Ref: APP/K6920/A/15/3133791

Site address: Former Axiom overflow car park, North Celynon, Newbridge, NP11 5AN

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 SRJ & JG Partnership against the decision of Caerphilly County Borough Council.
- The application Ref 14/0604/OUT, dated 5 September 2014, was refused by notice dated 6 August 2015.
- The development proposed is a residential development.

Decision

1. The appeal is allowed and planning permission is granted for residential development at Former Car Park, Aiwa Technology Park, Newbridge in accordance with the terms of the application, Ref 14/0604/OUT, dated 5 September 2014, and the plans submitted with it, subject to the conditions set out in the attached Annex.

Application for costs

2. At the Inquiry an application for costs was made by the appellants against the Council. This application is the subject of a separate Decision.

Procedural Matters

3. A screening direction has been issued on behalf of the Welsh Ministers which concludes that the development the subject of this appeal is not EIA development within the meaning of the 1999 Regulations¹. I have considered this direction and agree with the conclusion reached and I shall proceed on that basis. The parameters for the proposed development are set out in the accompanying documentation, which specifies the maximum number of dwellings and their maximum and minimum dimensions. These details will be assessed as part of the necessary reserved matters submissions.

¹ ¹ The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended), which were the relevant Regulations at the time of making the screening direction.

4. The Council's Planning Committee refused the application for four reasons. This decision was contrary to officer advice provided at 4 successive Committee meetings. Following the appeal and the submission of the Council's statement of case in December 2015, the Local Planning Authority sought the advice of Counsel on its case. The legal advice was that the Council could not provide sufficient evidence to substantiate any of the reasons for refusal. The Council's Planning Committee decided on 13 January 2016 not to support any of the reasons for refusal. This decision was confirmed to the appellants, the Planning Inspectorate and the objector in January 2016. A Statement of Common Ground (SOCG) to this effect was submitted before the Inquiry. As a result whilst officers attended the Inquiry to assist and respond to the application for costs, the Council presented no evidence or case in support of the reasons for refusal.
5. The SOCG contained an amended site location plan (drawing JPW0343-001 Rev G). The amendment includes a small portion of additional land necessary to connect the proposed footpath/cycleway to the north of the site to the existing footbridge and underpass leading to North Road. The land traversed is also in the appellants' ownership and was indicated as such in the application. The route was shown on plans submitted at the application stage and the amendment does not affect any other landowner. There is an existing informal path in use at this location. In these circumstances, I am satisfied that the amendment does not change the substance of the proposal and that no one would be prejudiced by its inclusion in the appeal proposal. I shall proceed to determine the appeal on the basis of the amended site location plan - JPW0343-001 Rev G.

Main Issues

6. The main issues are:
 - The significance of the loss of a site identified for employment use in the Caerphilly Local Development Plan (LDP);
 - The impact of noise from the adjacent industrial premises on future residents of the proposed dwellings;
 - Whether the proposal would result in the loss of jobs at the adjoining premises due to a perceived lack of security caused by the proximity of the proposed dwellings; and
 - Whether the proposed pedestrian link to North Road would be secure, especially the existing underpass beneath the railway line.

Reasons

7. The application site is part of the Aiwa Technology Park near the A467, north of Newbridge. There is a traffic light controlled junction onto the A467 serving the appeal site and a large industrial unit to the south occupied by a firm known as Axiom². The site principally consists of a tarmac car park with around 250 spaces. The site is at a lower level than the main road and there is an existing landscaped bund along the boundary with the main road. To the immediate north of the site is reclaimed land with a large number of semi-mature trees. The application indicates that this land and land to the west is owned by the appellants.

² Axiom MS Ltd hereafter referred to as Axiom

8. Planning Policy Wales³ states that the planning system must provide an adequate and continuous supply of land for development to meet society's needs (1.2.2). Employment and residential uses can be compatible as long as neither is unduly compromised (7.6.3). Sustainable modes of travel are to be encouraged to serve new development (8.1.3, 9.1.2). The re-use of previously developed land in preference to greenfield sites and the sustainability and other benefits of this approach are emphasised in section 4.8. Local Planning Authorities must ensure that sufficient land is available for residential development to provide a 5 year supply of land for housing (9.2.3); this is a duty under TAN1⁴.

The Loss of a Site Identified for Employment Use

9. The LDP provides 102 hectares (ha) of land for employment use under Policy SP16 and protects the site for employment use under Policies EM2 and CW13, as secondary employment site EM 2.14. However, this is not the end of the matter. The site is protected as a secondary employment site, which is at the lowest end of the spectrum of protection in the LDP. The Plan is in the process of being reviewed and latest information suggests that only around 4 ha of the 102 ha has been taken up to date. The Council commissioned an independent report⁵ that concluded the appeal site was in a poor location and an alternative use should be promoted if possible. The consultation version of the revised Plan accordingly proposes to indicate the site as white land only. The Council considered the proposal against the tests in TAN 23⁶ and concluded that several of the criteria for the employment site to be released were met. TAN 23 only requires one criterion to be met to satisfy the test.
10. The appellants' have undertaken marketing of the site since 2006. Copies of letters sent to potential buyers were provided. Whilst this may not have included the measures suggested by the objector (Axiom), the site has been offered for sale. There has been very little interest in the site. The only offer was from Axiom in 2015, some 10 years after Axiom had sold the site to the appellants. This offer was 50% of the original sale price. The objector has stated that the site is needed for expansion. However, the evidence was that this is not the case because a part of its premises is not used and is being marketed to let. There is no evidence of any demand for the site for employment purposes. The objector's evidence on the need for this employment site to be retained is either out-of-date or is general to the South Wales and not specific to this site.
11. The loss of an allocated secondary employment site and conflict with the relevant LDP Policies count against the proposed alternative use. The weight to be attached is reduced by the above factors.

³ Planning Policy Wales 8th Edition January 2016

⁴ TAN1 Joint Housing Land Availability Studies (2015)

⁵ BE Group Employment Sites and Market Supply Appraisal June 2014

⁶ TAN23 Economic Development (2014) paragraph 4.6.9

Noise Issues

12. The only professional evidence on noise issues that was presented to the inquiry came from the appellants' consultants. The dominant noise source at the appeal site is the adjacent main road, the A467. The relevant guidance for the consideration of noise issues in relation to planning applications is contained in TAN 11: Noise (published October 1997). The noise assessment concluded that the impact of noise from the A467 fell within Noise Exposure Category B (NEC B in Annex A of TAN11). The advice for NEC B is that "noise should be taken into account when determining planning applications and, where appropriate, conditions imposed to ensure an adequate level of protection". There are several measures that can be taken to mitigate this noise impact. These measures can be addressed by conditions requiring details of noise attenuation measures to be incorporated into the scheme to be submitted for the approval of the Local Planning Authority.
13. No concerns have been raised regarding the impact of traffic noise on the occupiers of the proposed dwellings. The only issue that had been raised was the impact of industrial noise on the proposed dwellings. This was despite the fact that planning permission for the adjoining premises was limited to B1 uses because there are existing dwellings in close proximity to the unit. The concerns raised by the Council related to the potential use of loading bays to the north of the unit (those closest to the site). This part of the factory is currently empty. It was let to Royal Mail for the Christmas period last year. The appellants' noise consultants undertook surveys at peak times in the early morning when Royal Mail were operating. The results demonstrated that traffic noise was still the dominant noise source and that it was within NEC B.
14. The Council at application stage required that a BS4142 assessment be undertaken, even though TAN11 states that this is not required where industrial noise is not the dominant noise source. The appellants undertook an assessment based on all 8 northern loading bays operating at once. This is an unrealistic scenario that has not occurred anywhere else in the noise witness's extensive experience. The results showed that the vast majority of the appeal site was still within NEC B. The effects could be attenuated by mechanical ventilation, now in widespread use in dwellings. It is necessary that conditions should specify this option as a possibility. It is important also to note that there are existing dwellings located at a similar distance to the proposed dwellings that would be equally affected by this unrealistic scenario. The Council now accepts that the impacts of noise on future residents can be controlled by conditions.
15. I am satisfied that the objections on the grounds of the impact of noise on the occupiers of the proposed dwellings can be addressed by the imposition of suitable conditions and this is not a basis for the refusal of planning permission.

Loss of Jobs at the Adjoining Business/ Perceived Lack of Security

16. Axiom had threatened to re-locate its business with the consequent loss of employment to the area, were planning permission to be granted. This assertion was the basis for the Council's reason for refusal. Its objection fails to provide any supporting evidence to show why the introduction of housing on the appeal site would lead to any perceived lack of security. No detail on the nature of operations or how security systems would be affected was provided. There was no explanation of why the development of the appeal site as proposed would lead to any perceived lack of security. There are already residential properties located as close to the objector's operations as the proposed development. The unit in the northern part of the Axiom building has been let to tenants without any apparent concerns regarding the threat to security. Past use of the unit involved outside employees parking on the appeal site (prior to 2011).
17. The objector's premises are secured by fences and a gatehouse. The objection referred to a perceived risk to security measures as the business has international defence customers. There is no evidence of how security would be compromised by the proposal or of any intention to re-locate if the proposal is approved. In these circumstances, the weight to be given to this matter is very low.

The Adequacy of the Proposed Pedestrian Link to North road

18. The reason for refusal identified this issue as "*The proposed pedestrian link to North Road is not considered to provide adequate security for users particularly the underpass section because of the lack of adequate surveillance*". There are several factors that run counter to this assertion. A route through this area is already in use and the replacement LDP proposes the improvement and enhancement of an existing path to form the Rhymney Valley Linear Cycle Route (TR1.1) along the western edge of the River Ebbw, which adjoins the appeal site. This will increase use of the network in this area. The appeal proposal includes the provision of a 3m wide footway and cycleway linking to North Road bus stops through the existing underpass. Its provision in accordance with approved details can be required by condition. The underpass is straight and overlooked by dwellings on North Road. Concerns were expressed about its condition. The submitted legal agreement contains a clause that the developer will use best endeavours to gain permission from the owner Network Rail to clean, paint and light the underpass. The route traverses a Site of Importance for Nature Conservation. There would be some loss of immature trees as a result of the provision of the footway. In the context of the limited impact this would have on the integrity of the site, this is not significant. It was not raised as a concern by the relevant consultees.
19. In any event, there is an alternative pedestrian route to Newbridge along the A467 on a modern well-lit footpath. The Council describe the appeal site as being a short distance from the railway station, which is the farthest of the services and facilities indicated in the evidence on distance to local facilities. I am satisfied that a safe route over the land indicated can be provided and that an alternative is available. As indicated to members at the time of the decision, objections on this ground cannot be sustained.

Other Matters

20. The site is in a sustainable location on a main road with as good access to facilities and public transport as many other parts of Newbridge. The Council agreed with this assessment. The objections on the grounds of the distance of the site to services cannot therefore be sustained. The objector raised issues of land ownership in relation to the access road. Whilst this is a civil matter, the appellants have provided evidence of an unfettered right of access to the site using the existing road. The concerns raised regarding extending the existing footpath along the A467 into the site are without foundation. The footpath can be provided on land within the appellants' ownership. The SOCG confirms that the other concerns raised during the application process had been addressed in the Council's reports to Committee. I have considered the report and conclude that this is the case.

Conditions

21. I have considered the suggested conditions in the light of the discussion at the Inquiry. I have taken into account the provisions of the Welsh Government Circular 16/2014⁷ and amended the wording to reflect the guidance therein and especially the model conditions. I have included access as a reserved matter as the evidence indicated that the footpath along the A467 should be extended into the site. The site is not close to any children's play facilities and it is essential that such facilities are provided within the site (4). This also addresses a concern raised by the objector. The indications are that communal waste and recycling collection is proposed in this area and facilities for such collections must be approved, provided and retained (5). I am satisfied that conditions 7, 8 and 9 (that are based on the model conditions) address the issues raised in the Natural Resources Wales (NRW) consultation reply. The site was formerly a coal mine that was remediated by the former Welsh Development Agency. The conditions address the investigation and remediation of any remaining contamination and the prevention of the use of contaminated material on site during construction. The requirement for drainage details arises from the need to control surface water infiltration in order to prevent pollution referred to by NRW and to control non-mains drainage referred to by the Council (10). The buffer zone along the river is required for maintenance access (11). The submitted documents include a mining stability report, the results of which have been verified by the Coal Authority. Given the history of the site, the model condition requiring appropriate site investigation and remediation measures is necessary (12). I have addressed the need for conditions relating to noise attenuation measures and the provision of a footway/cycleway to the north of the site above.

Planning Obligations

22. The provision of 10% of the proposed dwellings as affordable units is required and addressed by Policy CW11 of the LDP. The parties were satisfied that the signed Unilateral Undertaking (UU) would adequately provide for this level of affordable housing in accordance with the Council's requirements. I have no reason to question that conclusion.

⁷ The Use of Planning Conditions for Development Management, October 2014

23. The UU also provides that the appellants will use their best endeavours to secure an agreement with Network Rail in order to clean, paint and light the railway underpass at North Road and thereafter reasonably maintain it in perpetuity. Network Rail is not a party to the UU and this raises concerns regarding the enforcement of the agreement. The appellant argued that as an obligation that runs with the land, it has substantive legal effect and can be enforced. The appellant referred to a case where a similar obligation had been used that was considered by the courts⁸. It was held that an obligation to use best endeavours should normally be held to be an enforceable obligation unless the object intended to be procured by the endeavours is too vague or elusive to be itself a matter of legal obligation or the parties have provided no criteria on the basis of which it is possible to assess whether best endeavours have been, or can be used. The object in this case is clear i.e. to improve and maintain the underpass. The UU also clearly sets out what constitutes best endeavours. The above legal test is therefore met.
24. The UU is necessary, reasonable in scale and kind and directly related to the development. On this basis I am satisfied that these obligations meet national policy as set out in Circular 13/97⁹ and the 3 statutory tests set out in Regulation 122 of The Community Infrastructure Levy Regulations 2010. In these circumstances I consider that this obligation would be fairly and reasonably related to the development proposed and that it passes the statutory tests. Thus I afford the undertaking significant weight in my decision.

Conclusions and the Planning Balance

25. Planning Policy Wales and TAN 1 state that LPAs must ensure that sufficient land is genuinely available or will become available to provide a 5 year supply of land for housing. The latest housing land availability figures for Caerphilly County Borough are contained within the 2015 JHLAS, published July 2015. The parties at the inquiry agreed that Caerphilly has 1.9 years residential land supply based on the residual method. This demonstrates that the LDP is not delivering the required housing supply, despite its evidence base referred to by the objector. This evidence base has become out of date. Whatever the reasons for the lack of deliverable sites this does not alter the fact that the housing land supply is less than the 5 years required. In situations where housing land supply is less than five years TAN 1 confirms that this should be treated as a material consideration in determining planning applications for housing and that the need to increase supply should be given considerable weight when dealing with planning applications, provided the development would otherwise comply with national planning policies.
26. The loss of an allocated secondary employment site and conflict with the relevant LDP Policies in this regard count against the proposal. I conclude that the proposal complies with national and development plan policies apart from this one issue. In this case the evidence shows that there is a considerable over-supply of employment land with an intention to release the site in the LDP review. There is also a shortage of housing land of 1.9 years rather than the required 5 years. The proposal would add to the supply of housing land. I have found there to be little or no substance to the other reasons for refusal on the basis of the evidence presented to the inquiry. The

⁸ Jet2.com Ltd v Blackpool Airport Ltd [2012] EWCA Civ 417

⁹ Circular 13/97 Planning Obligations

Council has accepted that there is no evidence to substantiate any of the reasons for refusal. I consider that the benefits of the scheme in terms of increasing the supply of housing outweigh the loss of this employment land. I am reinforced in this conclusion by the evidence of the direction of travel in policy on employment sites that has been outlined above.

27. For the reasons given and having regard to all matters raised, I conclude that the appeal should be allowed, subject to the conditions set out in the attached annex.

A L McCooey

Inspector