



Llywodraeth Cymru
Welsh Government

From:

[REDACTED]
Planning Directorate

Cleared by:

Date:

[REDACTED]
13 February 2023

MINISTERIAL ADVICE

For decision by: Minister for Climate Change

Copied to: First Minister

Deputy Minister for Climate Change

Subject	Decision on a called in planning application for a dwelling at [REDACTED]
100 word summary	The Minister is asked to make a decision on the above called in planning application. The application proposes the erection of an affordable dwelling.
Timing	A decision is requested by 27 February 2023.
Recommendation	The Minister is asked to agree: <ul style="list-style-type: none"> • To issue a decision letter, which would refuse permission for the planning application. • On the basis our recommendation is accepted, a draft letter for the Minister's approval and signature is provided at Doc 2 (please return signed, not dated).
Decision report	This decision does require a Decision Report, which may be published no earlier than the date the decision is issued.

ADVICE

1. On 4 September 2020, the applicants sought the approval of full planning permission for an affordable dwelling which will be occupied by the applicants.
2. The application was called in by the Welsh Ministers on 17 September 2021. The reasons for calling in the application were that the proposal appears to be in conflict with national and local planning policies in relation to development in the countryside and is considered to raise issues of more than local importance.
3. The application site is situated on agricultural land located approximately 2km from Aberarth. There are a number of residential properties within the vicinity, although the application site forms part of an open and undeveloped field parcel located alongside a single-track unclassified road.
4. Plans are at Doc 3. Notes on processing the planning application and propriety issues relating to planning decisions are provided at Docs 4 and 5.

Inspector's report

5. A Planning Inspector, appointed by the Welsh Ministers, assessed the application and carried out a site visit. The Inspector's report (Doc 1) was received by officials in Planning Directorate on 13 December 2022.
6. The Inspector recommends that planning permission be refused.
7. The draft decision letter at Doc 2 provides an analysis and summary of the Inspector's report.
8. The Inspector concludes although the development site is amongst other dwellings, this is not an infill site as it does not comply with the definition of a 'settlement' as defined in the LDP. The proposal would represent an unsustainable form of development which would conflict with the sustainability and place making principles which underpin both local and national planning policy.

Recommendation

9. Officials agree with the conclusions of the Inspector and recommend you agree to issue the decision letter at Doc 2, which will result in the refusal of planning permission.

Legal Advice

10. No legal advice was sought for this submission.

Financial Issues

11. There will be no additional financial implications for the Welsh Government with the administrative costs related to this Ministerial Advice being met from within the existing Planning Directorate budget.

Well-being of future generations (Wales) Act 2015 (“the WFG Act 2015”)

12. In determining this planning application officials note the duty to carry out sustainable development under section 2 of the Planning (Wales) Act 2015. Officials consider the decision accords with the sustainable development principle set out in the WFG Act 2015. In accordance with section 3(2) of the WFG Act 2015 and the well-being objectives of the Welsh Ministers, the decision will help to “Make our cities, towns and villages even better places in which to live and work”.

Programme for Government

13. The subject of this advice is not a specific Programme for Government requirement, nor is it explicitly noted in the Co-operation Agreement. However, the recommended decision to refuse the planning application would accord with the commitments in the Programme for Government to “Make our cities, towns and villages even better places in which to live and work”.

Communication and media handling

14. The issue of housing in Ceredigion has been of press interest. On 17 May 2021, ITV’s Wales this Week ran a programme with [REDACTED] regarding the refusal of affordable, single dwellings in the countryside. We will work with the press office to provide appropriate lines if needed.

Annex 1: ASSURANCE AND COPY RECIPIENTS**CLEARANCE TRACKING**

Aspect	Tracking	Yes	No	N/A	Clearance no.
Finance	Financial implications over £50,000?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Group Finance?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Strategic Budgeting?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Local Government Finance?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Legal	Legal issues?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	Cleared by relevant lawyers?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Governance	Novel and contentious issues?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Corporate Governance Unit?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

DEPUTY DIRECTOR, STATEMENT OF ASSURANCE

In clearing this MA, I confirm that I, [REDACTED] have quality assured this advice, ensuring it is provided on the basis of evidence, accurately presents the options and facts and I am accountable for the recommendations made.

I am satisfied that the recommended decision or action, if agreed, would be lawful, affordable and comply with all relevant statutory obligations. Welsh Government policy priorities and cross portfolio implications have been fully considered in line with delivery of the government objectives.

I have fully considered the statement of assurance contained in the MA guidance to ensure all relevant considerations have been taken into account and that the actions and decisions take account of regularity, propriety and value for money.

COPY LIST

This submission advises on a planning decision; all copies of it are for information only and not for comment.

All mandatory copy recipients (as indicated in the guidance). Additional copy recipients specifically interested in this advice:

- PS First Minister
- PS Deputy Minister for Climate Change
- [REDACTED]

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: qA1474789

Mr [REDACTED]
ArchiSpec Architectural Consultants Ltd,
Chapel Street,
Llanarth,
SA47 0RG.

By E-mail: [REDACTED]

2023

Dear Mr [REDACTED]

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77.
CALLED IN PLANNING APPLICATION FOR PROPOSED LOCAL NEEDS
(AFFORDABLE) DWELLING AT [REDACTED]**

APPLICATION NO. A200773.

1. Consideration has been given to the report of the Inspector, regarding your client's planning application, Local Planning Authority reference: A200773.
2. On 17 September 2021, in accordance with Section 77 of the Town and Country Planning Act 1990 ("the 1990 Act"), the above named planning application was called in for decision by the Welsh Ministers. Under the provisions of the Government of Wales Act 2006, the power to determine applications under Section 77 of the 1990 Act has been transferred to the Welsh Ministers, these functions have been exercised by me as Minister for Climate Change.
3. The Inspector recommends planning permission be refused. A copy of the Inspector's report ("IR") is enclosed. All references to paragraph numbers, unless otherwise stated, relate to the IR.

Main Issue

4. The Inspector considers the main consideration in this case is whether the development is acceptable in principle, having regard to the planning policy framework. I agree the Inspector that this is the main issue relating to the application.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

5. For the purposes of the Ceredigion Local Development Plan (“LDP”) the application site falls within ‘Other Locations’, which is described as mainly open countryside with a scattering of small settlements where development will be strictly controlled. Consistent with national planning policy, development in such locations should be strictly controlled, although there are some exceptions for affordable housing schemes. (IR 32)
6. The Inspector notes policy S04 of the adopted LDP states general housing provision will only be permitted in ‘*Linked Settlements*’ and that all ‘*Other Locations*’ are inappropriate for housing development unless justified on the basis that, amongst other things, it meets a demonstrated unmet affordable housing need in the locality and otherwise accords with Policy S05. Policy S05 goes on to seek to facilitate the delivery of affordable housing, specifically permitting 100% affordable housing sites where justified by evidence of unmet affordable local need. This includes those ‘*Other Locations*’, although the reasoned justification of that policy does go on to clarify that such ‘*rural exception sites*’ would be required to be within or adjoining existing rural settlements which would not otherwise be released for market housing. (IR33)
7. The Inspector notes whilst the applicants argue the proposal would represent a form of infill development which would be located within a cluster of 9 other existing dwellings, the Inspector is not persuaded the development would be compliant with the thrust of Policy S05. In coming to this conclusion, the Inspector has been mindful of the dispersed nature of the existing dwellings cited within the applicants’ evidence and has been particularly mindful of the fact that the reasoned justification to Policy S05 clarifies that such exception sites should be within or adjoining existing rural settlements. The application site is not within or adjoining an established settlement for planning purposes and would therefore conflict with the development strategy of the adopted LDP. (IR35)
8. The Inspector states national policy encourages the delivery of affordable housing and Planning Policy Wales (“PPW”) allows for some infilling where it meets a local need for affordable housing. However, paragraph 3.60 of PPW states new building in the open countryside away from existing settlements or areas allocated for development in development plans must continue to be strictly controlled. The Inspector states as the application site is located away from the settlements identified within the adopted LDP, it follows that development in such locations should be strictly controlled. (IR36)
9. The Inspector also states the development would be heavily reliant on the use of a private car as there are no pedestrian footways leading to the development. (IR37)
10. The Inspector states there is no public transport options readily accessible from the land therefore this application is not a sustainable form of development. (IR37)
11. Much of the applicants’ arguments in favour of the development derive from the perceived benefits which would arise from the applicants being able to reside closer to their extended family. The Inspector states the benefits of the applicants’ moving closer would be reduced car journeys as the family assist with childcare arrangements, however, the Inspector notes there is little evidence demonstrating overall daily car movements would be reduced, and such short-term benefits do not justify a permanent dwelling in an unsustainable location. (IR38-39)
12. The Inspector concludes that the proposal would represent an unsustainable form of development, which conflicts with the sustainability and placemaking principles which underpin national policy in PPW, the development strategy promoted through the adopted LDP and the aims of policy S05. (IR40)

Other material considerations

13. The Inspector notes concerns have been raised by interested parties that the development does not integrate with the surroundings. However, the Inspector does not consider the development would be unacceptable on these grounds. (IR41)
14. The Inspector also highlights other concerns raised such as construction disturbance, highway access and removal of a hedgerow and that these can be controlled using suitable conditions. (IR42)

Overall Conclusions

15. The Inspector notes the proposal would represent an unsustainable form of development which would conflict with the sustainability and place making principles that underpin both local and national planning policy. (IR43)
16. In reaching their recommendation, the Inspector has considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-being of Future Generations (Wales) Act 2015 ("WFG Act"). The Inspector has taken into account the ways of working set out at section 5 of the WFG Act and considers that the recommendation is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WFG Act. (IR 44)
17. The Inspector recommends the application for planning permission is refused. (IR 45)

Formal Decision

18. I agree with the Inspector's reasoning and conclusions. For the reasons set out in the Inspector's report, and in exercise of the power referred to in paragraph 2 of this decision letter, I hereby refuse planning permission for planning application A200773.
19. In reaching this decision I note the Welsh Ministers must, in accordance with the WFG Act, carry out sustainable development. I have taken into account the ways of working set out at section 5(2) of the WFG Act and 'SPSF1: Core Guidance, Shared Purpose: Shared Future – Statutory Guidance on the WFG Act'. My assessment against each of the ways of working is set out below:

Looking to the long-term

20. The decision takes account of the need create sustainable developments for the long-term.

Taking an integrated approach

21. I have considered the impacts from the development proposal on the Welsh Government's well-being objectives, which incorporate the well-being goals set out in section 4 of the WFG Act. Where an objective is not set out, the effect of this decision is neutral.

Impact on well-being objectives

- Make our cities, towns and villages even better places in which to live and work – positive effect.

Involving people/Collaborating with others

22. Within the framework of a statutory decision-making process, which is governed by prescribed procedures, the application was subject to publicity and consultation, providing the opportunity for public and stakeholder engagement. Representations received through these procedures have been considered and taken into account in making a determination on this application.

Prevention

23. The decision would prevent development being undertaken which would undermine the placemaking principles in PPW.

Integration

24. The decision has been made taking into account economic, social and cultural well-being which has led to the developer not being considered sustainable.
25. I consider my decision accords with the sustainable development principle set out in the WFG Act. Therefore, I consider the decision is a reasonable step towards meeting the Welsh Government's well-being objectives.
26. A copy of this letter has been sent to Ceredigion County Council.

Your sincerely,

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Note on the processing of a planning appeal/application following the submission of Inspector's report to the Welsh Government Planning Division.

Action by officials

1. On receipt of the report parties are notified and given indication of the time-scale for issue of the decision.

The Inspector's report will comprise:-

- A description of the site
- The gist of the cases presented by the parties
- The Inspector's conclusions and recommendations.

2. Where a case has been dealt with by public inquiry/hearing the inspector's report of those proceedings will be accompanied by the documents submitted to him/her by the parties. Where a case has been dealt with by written representations the inspector's report of the site visit and appraisal of the planning issues will be accompanied by the written representations of the parties. All the inquiry documents/written representations will be available for the Minister.

3. In considering an appeal/application we will look at :-

- The Inspector's report
- Relevant documents and plans
- Post inquiry representations

A check will be made to ensure that all documents and papers are in place. The substance of the report will then be considered having regard to the matters set out below and this process will form the basis of our advice and recommendation to the Minister

Consideration of the Inspector's report

4. The starting point is Section 38(6) of the Planning and Compulsory Purchase Act 2004 which states that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise

5. The first step is to identify and correctly interpret relevant development plan policies. Then:-

- if the proposed development accords with the development plan and other material considerations either favour the development or, if unfavourable to the development, are not sufficiently weighty to justify a refusal, then the proposal should be allowed

- if the proposed development is in conflict with the development plan the proposal should be refused unless other material considerations favouring the development indicate otherwise
- if there are no relevant development plan policies the proposal should be determined on its own merits taking account of all material considerations

6. What is a material consideration is a matter of law. Generally it is any matter which is relevant to the application and can be properly regarded as relating to the application and relevant to the use and development of land. The weight to be given to a material consideration is a matter for the decision maker.

Examples of material planning consideration could include:-

visual/landscape impact
residential amenity
access
government policy
planning history of the site

7. Planning permission may be granted subject to conditions – they are important because their imposition may make it possible to grant planning permission for a development where it would otherwise have to be refused as unacceptable. Thus a good test of whether a condition is necessary will be whether permission would have to be refused if the condition were not imposed. Planning conditions must be:-

- necessary
- relevant to planning
- relevant to the development
- enforceable
- precise
- reasonable

The local planning authority will usually submit a list of conditions to be imposed if planning permission is to be granted. The parties to the proceedings will comment on these and the Inspector will include a recommendation on them in his report.

8. In deciding whether or not to accept the Inspector's conclusions and recommendations the following points are considered:-

- has the Inspector correctly understood national and local policy
 - is the Inspector's reasoning acceptable and logical
 - are the conditions proposed adequate/proper
 - has the Inspector relied on a matter which is not a material consideration.
- These matters are essentially legal/technical issues. Officials will advise on the treatment of these matters to ensure that the Minister's decision is made within the appropriate legal framework eg. only taking into account material considerations. Where appropriate any legal/technical planning matters will be dealt with in the decision letter.

9. In addition to the material presented with the Inspector's report new evidence may be submitted following the close of the inquiry. In such instance it will be necessary to consider whether it materially affects the proposed decision and, if so, reference back to the parties seeking their views will be necessary before the decision issues.

10. Officials will also advise the Minister if the Inspector's report includes any statements with which, even if they agree with the Inspector's overall conclusion, it may nevertheless be necessary for the Minister to disassociate herself – eg. on a particular mis-interpretation of planning policy, which, if left uncorrected, could be taken to represent Welsh Government policy.

Issues for the Minister

11. Officials will provide advice, having regard to the matters set out above, on whether the Inspector's recommendation should be accepted or, if not, what options are open to the Minister. However, it is not generally for officials to make recommendations on matters of planning judgement reached by the inspector. The balancing of planning issues – the development plan policies and the other material considerations – is essentially one for the Minister.

12. It should be stressed that a decision to disagree with an inspector's judgement should not be made lightly. Inspectors are appointed to provide advice because of their expertise in planning matters and holding inquiries. Significant weight has therefore to be given to inspectors' reports and their planning judgements and there would need to be exceptionally good reasons to question the weight and relevance that they have attached to the evidence. If the Minister disagrees with an inspector's judgement officials will on advise on the options that would be open.

13. Officials' advice will be set out in a Submission to the Minister.

The Submission will consist of:-

- a summary of the main issues of the case, officials' assessment of the Inspector's conclusions and their recommendation and advice on what decision should be taken (and where appropriate what alternative options may be open to the Minister)
- a copy of the Inspector's report
- site maps, plans and photographic evidence
- a list of proposed conditions
- a Statement of Information
- a draft decision letter

14. The decision letter will set out the reasons for the decision and once signed by the Minister, or by an official with the authorisation of the Minister, it will be issued to the parties.

15. It would be unusual for the Welsh Government to issue a Press Notice in respect of decisions about appeals made under Section 78 of the Town and Country Planning Act 1990 or called in applications under Section 77 unless there were particular circumstances necessitating such publicity. This is because a decision is final once it has been made and Welsh Ministers then have no further jurisdiction in the matter unless the decision is overturned in the Courts. It is particularly important that nothing is said that could prejudice the decision in the period (usually six weeks) that a decision may be subject to a legal challenge or, if a challenge is initiated within that period, during the further period before the case is concluded.

Propriety issues in relation to the Ministerial decision making on planning appeal and called in applications

1. The objective is to ensure that every decision is properly taken and to avoid the risk of successful legal challenge. The aim therefore is to ensure that the parties involved in planning cases are dealt with fairly, justly and openly: and that all the evidence is fully considered and that decisions are based only on material planning considerations to which all parties have had access. The law protects these principles and decisions can be challenged in the Courts if they are not followed.

2. Planning decisions must be taken in line with the principles of natural justice. This means that all the parties to a planning case which is to be determined by the Minister have the right to present their case and to see and comment on those of the other parties. The decision must not be based on any other evidence (including private representations), except published policies of the Welsh Government, which can be taken as being known to the parties. It is important to avoid giving any cause for suspicion that such private representations have been made and taken into account. If, during the process of reaching a decision, new evidence is produced which could affect the way the decision might be taken, it must be shared with the parties for them to comment on if they wish.

3. The Minister will need to consider whether they should:

- take a decision on a planning case in which they have, or might be perceived as having, a private or constituency interest.
- take planning decisions on planning cases within their constituency or those directly affecting their constituency.
- take a decision on a planning case where evidence is to be given by or on behalf of a function of government for which they are responsible or where such function is a significant consideration in the case.

The Minister should:

- not discuss a case with any interested party
- not comment on any planning application, or matter that might become the subject of a planning application, in case they might be considered to have prejudged the matter if it subsequently came before them. If that were the case the Minister could not take part in the decision.

4. The Minister may as part of their wider duties need to attend meetings where development projects are described and visit sites where development is planned. In such circumstances the Minister should avoid expressing views on the planning merits of the scheme which might be seen as prejudicing the determination of any subsequent planning decision. Where a decision has come to the Minister for a decision such visits or meetings should be avoided if at all possible. If a meeting is unavoidable great care should be taken to avoid discussing the planning case and the Minister should not take the decision and make it clear to the parties they will not do so.

5. The Minister may make representations about a planning application in their constituency to the local planning authority, or the Planning Inspector if an appeal is to be decided by an inspector, or the Inspectorate where an application has been called in or an appeal recovered for Welsh Ministers to determine: but before the inquiry had closed. All such representations must be made openly and on the basis that they will be available to all interested parties. The Minister must make it clear that they are acting on behalf of their constituents, or that the views expressed are their own personal opinion and not in any way the Welsh Government's view. The Minister cannot take any part in the decision and must make it clear that they will have no special influence on the outcome.

6. Once a decision has been made it is final and the Welsh Ministers have no further jurisdiction in the matter unless the decision is overturned in the Courts. The Minister should not comment on it or discuss it afterwards. It is particularly important not to say or do anything that could prejudice the decision in the period (usually six weeks) that a decision may be subject to a legal challenge or, if a challenge is initiated within that period, during the further period before the case is concluded.