



Cynulliad Cenedlaethol Cymru
The National Assembly for Wales
Parc Cathays / Cathays Park

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CF10 3NQ

Eich cyf / Your Ref

Ein cyf / our Ref A-PP1 22-07-020

Mr D Carnegie
Town Planning Consultant
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18 December 2000

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990: SECTION 77
CALLED-IN APPLICATION BY MRS S G JAMES FOR THE PROPOSED ERECTION OF
DOMESTIC BUNGALOW AT FFYNNON LAS, GOGINAN, ABERYSTWYTH**

1. Consideration has been given to the report of the Inspector, Mr Stuart B Wild, MRTPI MIMgt, who reported on the application by Mrs S G James for the erection of a domestic bungalow at Ffynnon Las, Goginan, Aberystwyth. The application was dealt with by written representations.
2. On 18 January 2000 the National Assembly for Wales directed, under Section 77 of the Town and Country Planning Act 1990 (the 1990 Act), that the application be referred to it rather than being determined by the local planning authority. On 5 December 2000 the Assembly resolved that a committee, to be known as Planning Decision Committee 2000/3 be established, in accordance with Standing Order 27 to discharge the functions of the Assembly under Section 77 of the 1990 Act in respect of the application by Mrs S G James described above. Accordingly, the Planning Decision Committee have considered the application and have resolved under Standing Order 27.16 to adopt this letter.
3. The written representations submitted in support of the application together with those of Ceredigion County Council and third parties and interested persons have been considered by the Inspector. The Inspector has visited the site and furnished a description of it. His appraisal is set out at paragraphs 30 - 35 of his report, a copy of which is enclosed. The Inspector recommended that planning permission be refused.
4. Section 54A of the Town and Country Planning Act 1990 states that where in making any determination under the Planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise. The development plan for the purposes of this application is the Dyfed County Structure Plan Alteration No 1. The Planning Decision Committee agree with the Inspector that there is clear conflict between this proposal and policy H8 of the Approved Dyfed Structure Plan which presumes against new dwellings in the countryside unless needed for agriculture forestry or other appropriate employment



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where someone must live on the spot rather than in a local settlement. The Planning Decision Committee have therefore considered whether there are material considerations which indicate that a decision should be made otherwise than in accordance with the development plan.

5. The site is in an area designated as a Special Landscape Area (The Cambrian Mountains) in the deposit version of the Ceredigion Local Plan. Although completion of the Ceredigion Local Plan has been halted, the designation of the site has been taken into account as a material consideration by the Planning Decision Committee. They see no reason to disagree with the Inspector's assessment that the site is clearly visible in the open countryside and that its prominent position makes it particularly harmful to the character and appearance of that area. The Planning Decision Committee also agree with him that it is doubtful that satisfactory landscaping could be implemented without many years of growth, and that in any event screening would not overcome the objection to the principle of a new dwelling in the countryside.

6. The local planning authority consider that policy H23 of the deposit version of the Ceredigion Local Plan, which provides that in considering proposals for new dwellings account should be taken of the needs of prospective occupants who fall into particular categories including those judged able to make a positive contribution to the social fabric of the community, should be a material consideration in the determination of this application. However, because this policy is in direct conflict with policy H8 of the Structure Plan the local planning authority has resolved not to implement it. The Planning Decision Committee are thus of the view that it would not be appropriate to address this conflict otherwise than through the development plan process. This being so, the Planning Decision Committee do not consider that policy H23 carries sufficient weight in this application to outweigh the strong policy objections against the proposal.

7. The Inspector's report refers to the opinion of the Planning Committee (now the Development Committee) that there are material considerations which outweigh the policy objection to the proposal. This contention was mainly based on paragraph 4.6 of Planning Guidance (Wales) which states that exceptionally, even though such considerations will rarely outweigh the more general planning considerations, the personal circumstances of an occupier, personal hardship or the difficulties of business which are of value to the local community, may be material in the consideration of any planning permission.

8. The Planning Decision Committee have given full and detailed consideration to all the representations presented on the question of personal circumstances. However, they find that they are unable to conclude, on the basis of the submitted evidence, that such exceptional grounds personal to the applicant and her family have been demonstrated as would in this case support their taking a different view from the Inspector on this matter, and justify the grant of planning permission. While the Planning Decision Committee accept the Inspector's view that the building works have proceeded in ignorance rather than deliberately they do not consider that this is a consideration which would, of itself, support granting a planning permission in these circumstances, despite the prospect of a substantial financial loss.

9. The Planning Decision Committee also agree with the Inspector that the absence of evidence as to the intended future occupiers of the proposed dwelling or whether they are employed in agriculture forestry or other necessary occupation makes it impossible to conclude that the development, subject to an appropriate occupancy condition on it.

or on the existing farmhouse at Ty'n-y-Pwll could fall within any exception to the presumption against new dwellings in the countryside. Similarly the absence of any evidence to indicate whether or not the bungalow is intended to replace the existing farmhouse prevents any consideration of the extent to which the effect on the countryside of the proposed dwelling would be mitigated by a condition requiring the occupation of the existing farmhouse to be discontinued.

10. The Planning Decision Committee do not consider that the question of whether the planning permission granted in 1980, for the conversion of a pair of semi-detached cottages on the site into a bungalow, subsists is a matter which should be determined in the context of this application. The Planning Decision Committee have taken into account the planning permission as a material and relevant consideration being part of the planning history of the site. However, the Planning Decision Committee do not consider that the 1980 permission represents a material consideration of such weight that would justify a decision on this application which was not in accordance with the development plan. In coming to this conclusion, the Planning Decision Committee have taken into account the statement by the local planning authority that the old structure was the justification for the permission which was for re-use and extension and not reconstruction. The Planning Decision Committee are of the opinion that, due to the collapse or demolition of the old building, it is unlikely that the 1980 permission is capable of being used and in these circumstances, it does not consider that significant weight can be accorded to it. The local planning authority argued that the site was not a "green field site" as such, but the Planning Decision Committee do not consider that this is a factor of significant weight given that all the previous building above ground has been removed.

11. Having regard to all the evidence before it the Planning Decision Committee agree with the Inspector that the proposal as presented by the applicant would not comply with the Development Plan and national policies and conclude that there are no material considerations of sufficient weight, either alone or taken together, to indicate that the decision on this application should be made otherwise than in accordance with the development plan.

12. For the reasons given above, the Planning Decision Committee hereby refuse to grant planning permission for your client's proposed development of a domestic bungalow at Ffynnon Las, Goginan, Aberystwyth, Ceredigion in accordance with application reference: 99/0103.

13. A copy of this letter has been sent to the Director of Planning, Ceredigion County Council and Mrs S G James.

Yours sincerely



Sue Essex AM

Chair, Planning Decision Committee 2000/3

Enc: Leaflet "HC"



Adroddiad

ymweliad a safle cynhaliwyd ar 10/04/2000

Report

site visit held on 10/04/2000

gan/by Stuart B Wild MRTPI MIMgt

**Arolygydd penodwyd gan Cynulliad
Cenedlaethol Cymru**

**an Inspector appointed by the National
Assembly for Wales**

Dyddiad/Date **21 -06- 2000**

Reference : APP/D6820/X/00/513740

- The application was called in for decision by the National Assembly for Wales by a direction made under Section 77 of the Town and Country Planning Act 1990, for the following reason:

The proposed development raises planning issues of more than local importance:

- The application was made by Mrs S G James to Ceredigion County Council.
- The site is located at Ffynnon Las, Coginan, Aberystwyth, Ceredigion.
- The application (ref:99/0103) is dated 4/02/99.
- The development proposed is a domestic bungalow.

Summary of Recommendations: I recommend that planning permission be revised for the reasons set out below.

Procedural matters

1. In a letter dated 11/02/00 the Planning Inspectorate stated that the following matters appear likely to be amongst those relevant to the consideration of the application;

1.The visual, environmental and access implications of the proposed development on the site and surrounding areas, and

2.Relevant national and development plan policies, especially in relation to the Government's policy on housing in open countryside as set out in Planning Guidance (Wales): Planning Policy (First Revision) - April 1999.

2. This report includes a description of the proposal, the site and its surroundings, the planning history, policy framework, my appraisal (on the basis of my observations and the written representations of the parties) and my recommendation as to the decision which might be made in this case.

The proposal

3. The application form is dated 4/02/99 and refers to an application for full planning permission for a domestic bungalow. The application form states that there would be no new or alterations to an access to the highway. The application was made in the name of Mrs S G James. The application site extends only to the site of the dwelling, marked as Patchyn-glas on the application site plan, and its immediate surroundings. The surrounding land including the farm house and buildings, marked as Ty'n-y-pwll, is shown as being in the same ownership.

4. The external shell of the bungalow has been largely completed. It has stone walls and a slate roof. It was agreed at the site inspection that all the building works above ground level are new. This was confirmed by my observations. The access road to the site appears to have been extensively rebuilt and widened compared to that shown on the site plan. The access

joins that which already serves Ty'n-y-pwll. The access road as it exists, and its junction to the nearest public highway is adequate to serve the property without highway objections. This access is outside the application site and does not form part of my considerations.

The site and surroundings

5. The site is located in open countryside about 1 mile north west of Goginan. It is on the hillside above the farm Ty'n-y-pwll. Much of the hillside is heavily wooded. The bungalow and its access is clearly visible across the valley from the A44. The area is designated as a Special Landscape Area (The Cambrian Mountains) (SLA) in the deposit version of the Ceredigion Local Plan. From my observations the quality of the landscape in the area surrounding the appeal site is appropriate for such a designation.

Planning history

6. There had previously been a pair of semi-detached cottages on the site which had last been occupied in the early 1950s. In 1980 planning permission was granted for the conversion of the building into a bungalow. In 1984 an application for a new dwelling on the site was refused. An identical application was approved under the Building Regulations. Despite the refusal of planning permission work appears to have commenced on the 1984 proposal. There is some conflict between the parties as to whether the 1980 approval was commenced or not. In any event all the former building above ground level was removed, and new works carried out. Work appears to have stopped after a relatively small amount of work had been done. In 1998 it was observed that a new bungalow was being built on the site of the former cottages.

The policy framework

7. Government policy is set out in Planning Guidance (Wales): Planning Policy (first revision) (PGW) and the associated Technical Advice Notes. Paragraph 5.1.1 on countryside and paragraph 4.6 on personal circumstances of PGW are particularly relevant to this case.

8. The Council's policies for the area are contained in the approved Dyfed County Structure Plan Alteration No 1 and the draft Ceredigion Local Plan, completion of which was halted after the consideration of representations received so that work could be concentrated on the UDP.

9. In addition to the general housing policies concerning land supply structure plan policies H8 and EN3 are particularly relevant. H8 presumes against new dwellings in the countryside unless needed for agriculture, forestry or other appropriate employment where someone must live on the spot rather than in a local settlement, and EN3 is concerned with the protection of SLAB. There are similar policies contained within the local plan.

The case for the applicant

The main points are:

10. The building works to implement the 1980 planning and building regulations approvals was extensive and were to be organised and part undertaken by the applicant himself and therefore in order to fully protect his position, the applicant commenced preparatory work well within the periods covered by both planning and building regulation approvals. Unfortunately, during the initial works on the site and buildings, the walls of the derelict existing structure which were to form part of the new structure fell down and the applicant

was obliged to seek the advice of the Council's building control staff as to his best course of action. He was advised to construct new cavity walls and to submit revised plans for consideration. He was very surprised that his revised plan for a bungalow on the site was subsequently refused and so he determined to construct a unit on the footprint of the cottages on the site for which he had an outstanding approval.

11. For various reasons progress on the construction of the residential unit was ceased and it was only during the 1998 that the applicant was in a position to recommence work on the site which was accelerated by family health circumstances. The applicant clearly understood that he had the benefit of a valid planning approval which he had part implemented and was therefore valid in perpetuity.

12. When the local planning authority initially considered a proposal to develop a residential unit on the application site they accepted that the reinstatement of the two derelict cottages in this location was acceptable in planning policy terms. The applicant had part implemented the planning and building regulation approvals which were issued at that time and whilst planning policy for new houses in the countryside may now be more rigidly applied in the Ceredigion area today, the fact remains that the applicant was only taking steps, as advised by the Council's building control officers at the time, to replace the fallen walls with modern cavity wall constructions.

13. It is noted that the local planning authority consider that since the walls of the original derelict cottages collapsed then the planning permission of 1980 has been seriously damaged, however, case law is not particularly clear on this issue and, as the extract from the manual of Development Control Practice provided by the County Council indicates, there have been examples where the fact that no element of the original building remains has not prevented a planning approval for conversion being within the terms of the original planning consent. It is considered that in this case the proposal to reinstate a residential use on this -site, albeit in a slightly amended form of internal layout and external appearance, is within accepted planning policy since the original approval has been part implemented.

14. In considering this rather complicated case, the members of the Planning Committee of the Ceredigion County Council have fully appreciated the planning history and local problems associated with this site and its development. Planning consent for the reinstatement of the residential use on this site was issued in 1980 and the scheme to convert the cottages was started within the statutory period however, through no fault of the applicant, he was overtaken by events, that is the collapse of the walls of the derelict cottages during preparatory works on the site, and subsequently he has followed the advice of the officers of the then District and now County Council.

15. However, that advice given and accepted in good faith, has led to the applicant submitting a series of planning applications for which there was no need. The facts are that he has the benefit of a valid planning approval on the application site which he has part implemented and there is case law to support the contention that even if there is no element of the old building incorporated into the new structure that need not invalidate the planning permission

16. The views of the Planning Committee should be supported in this case and that the scheme to implement the development of a bungalow on the application site should be approved.

The case for the Local Planning Authority

The main points are:

17. The key issues in the determination of this application are whether there is an extant permission for the erection of a bungalow at this site and, if not, whether the proposal is in conflict with the provisions of the development plan i.e. the approved Dyfed Structure Plan, the provisions of the Ceredigion Local Plan Deposit Version and Government advice contained in PGW, the impact of the proposal on the character and appearance of the locality and whether there are any other material considerations which may be regarded as having sufficient weight to justify approval of the development proposed.

18. The local planning authority now accepts that the 1980 permission for conversion has been lost due to the collapse or demolition of the old building. The old structure was the justification for this permission which was for re-use and extension and not reconstruction. The new building as erected has the internal layout and external appearance of the application refused in 1984.

19. The local planning authority also accepts that the site is located in the open countryside and are mindful of Policy H8 of the Approved Dyfed Structure Plan and Policies ESD07 and Ell of the Deposit Version of the Ceredigion Local Plan. The Council acknowledges that Section 54A of the town and Country Planning Act 1990, as amended by Section 26 of the Planning and Compensation Act 1991, imposes a duty on authorities to determine applications for development in accordance with the development plan unless material considerations indicate otherwise. After a difficult period relating to local housing needs in rural parts of Ceredigion which has resulted in the Authority being monitored by the National Assembly for Wales, the Council now accepts that approved policies offer little support for the continuation of sporadic development in the open countryside. As a result, Ceredigion's recent record in determining applications in accordance with the provisions of the development plan has been exemplary.

20. It is the opinion of the Planning Committee (now the Development Committee) that there are material considerations which outweigh the policy objection. This contention is based mainly on the contents of Paragraph 4.6 of PGW which states that exceptionally, even though such considerations will rarely outweigh the more general planning consideration, the personal circumstances of an occupier, personal hardship or the difficulties of businesses which are of value to the local community, may be material in the consideration of any planning permission.

21. The local planning authority accepts that the applicant has acted in good faith and that he genuinely believes that he has the benefit of a valid planning permission. Furthermore, it is obvious from the documents submitted on behalf of the applicant that he has informed the Council's building control officers at all stages of the development of the site. He has never attempted to mislead anyone. It is understood that the applicant has spent a considerable sum of money on the work already undertaken and if he is forced to demolish the building will undoubtedly suffer considerable financial hardship.

22. The Council has long wished to establish a policy structure which gives effect to the principle of people who work in the locality, or who are able to make a positive contribution to its social fabric, enjoying a priority to access to new dwellings over those who cannot be so qualified. The Council feel this objective may be assisted by regarding as a material consideration the employment status or social acceptability of the prospective occupants of new dwellings. The Council feels this is an issue which applies throughout rural Ceredigion

and that the policy would be of particular utility in circumstances where planning permission would not otherwise be granted. In order to protect the language and culture of Ceredigion it is also considered that a factor which could be taken into account is the prospective occupant's linguistic ability. These sentiments and aims are embodied in policy H23 of the deposit version of the Ceredigion Local Plan. The Council has not sought to define the terms of this policy too clearly, preferring to consider each case on its own merits and taking into account the particular housing needs of identified prospective first occupants. It is accepted that this policy is in direct conflict with Structure Plan policy H8 but nevertheless, the Council genuinely feel that it should be a material consideration in the determination of this application.

23. The local planning authority is satisfied that two small dwellings existed at this site until 1953. Even after this date, until some time between 1980 and 1984, it is clear that the building still existed and was used for agricultural storage purposes. The authority considers that the National Assembly for Wales should attach much weight to the fact that this was not a "green field" site as such. Furthermore, because of these fairly exceptional and unique circumstances, the Council is satisfied that approval of the application will not set a dangerous precedent which would cumulatively undermine approved planning policies that seek to constrain development in the countryside.

24. On the third issue concerned with visual amenity, the local planning authority accepts that the site is located in an elevated position and is prominent from a distance including the A44 Trunk Road. It is considered, however, that the impact of the building could be significantly reduced by extensive landscaping and screening. Furthermore, it must be remembered that historically there have been buildings on this site.

The case for third parties and interested persons

The main points are:

25. The Melindwr Council express their unanimous support of the endeavours of Mrs S.G. James and her son Ceredig James to build a home on the site known as Ffynnon Las (formerly Patchyn Glas), Goginan, within the territory of Melindwr Council.

26. Ceredig James has been born and bred at Ty'n Pwll, Goginan, a few yards from the site where he hopes to be able to complete the new home. The site which was the location of the old family home, last used in 1954, has been bequeathed to them by Ceredig's father and the rebuilding work on the old foundations has been commenced in the sincere belief, which is quite understandable in the case of people who are unfamiliar with the complexities of planning regulations, that a planning permission granted some years previously was still valid.

27. Melindwr Council, in common with the vast majority of local residents, is of the opinion that the circumstances outlined above ought to outweigh any planning considerations which have been inadvertently contravened. It would be considered a gross injustice and an intolerable bureaucratic interference in an owner's rights on his own property to enforce the demolition of work which already represents a substantial financial investment.

28. It is also felt that the building is located on a site which although it might contravene the canons of externally dictated planning regulations, is completely compatible with the age-old traditional rural settlement pattern of the western counties of Wales. If the current planning rules and regulations are incapable of respecting and conforming to the intrinsic settlement

pattern of rural Wales, it is high time that the National Assembly undertook the task of reconsidering and adapting the planning laws that are operational in Wales.

29. The views of the Community Council are supported by an extensive petition and individual letters of support for the applicants.

Inspector's appraisal

30. From the evidence before me and from my observations on site the bungalow, which has been largely completed, is a new building and not the renovation of a former building. None of the structure above ground is original, and from the building control records it would appear that new foundations were provided. The only common factor appears to be that this bungalow is on the same site and occupies the same footprint as the former cottages.

31. Whether or not the former planning permission is still valid is a legal matter for the National Assembly for Wales to consider. However, from the evidence before me I have no doubt that the 1980 permission lapsed when the former cottages were taken down. I have no detailed evidence on what the then developer may have been told by the Council's building control officer, but I doubt that a legal case of estoppel could be made given the documentary evidence before me. Whilst different names have been associated with the development over the years, my understanding is that they are all members of the same family. Whilst they may not have fully understood the importance of the removal of the old cottages they should have been in no doubt that planning permission had been refused for a new dwelling in 1984.

32. There is substantial support for this proposal from the Council, the Community Council and local residents. There are indications that the bungalow is for the applicant's son, Ceredig James, who was born at Ty'n-y-pwll. However, there is no firm evidence as to the future occupiers or whether they are employed in agriculture, forestry or other necessary occupation. It is not possible therefore to consider the appropriateness of either an occupancy condition on the new bungalow or on the existing farmhouse at Ty'n-y-pwll, which is indicated on the application as being in the applicant's control. Similarly no detailed information is included within the evidence to indicate whether or not this bungalow is to replace the existing farmhouse. If that were the case then conditions could be attached to ensure that only one dwelling remained in occupation.

33. In the absence of such detailed evidence I do not accept that this case is one in which personal circumstances could justify the grant of a planning permission. It appears to me that the concern is that the building works have proceeded in ignorance rather than deliberately. In my view that is not an argument which could support granting a permission in these circumstances, despite the prospect of a substantial financial loss.

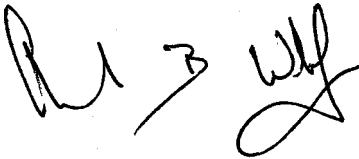
34. I note that there is concern by the Council that they wish to establish a policy structure which gives effect to the principle of people who work in the locality, or who are able to make a positive contribution to its social fabric, enjoying priority access to new dwellings over those who cannot be so qualified. My understanding is that local plan policy H23 was intended to provide this sort of opportunity. I note that the Council **resolved not to implement that policy** because of the conflict with structure plan policy H8. In my view such policy considerations must be resolved within the context of the development plan before they can carry significant weight in the determination of individual planning applications.

Conclusions

35. There is a clear conflict between this proposal and the policy background set out in PGW and structure plan policy H8. In my view the planning history of this site does not amount to sufficient special personal circumstances to justify setting aside the very strong policy objections to a new bungalow on this site. It is clearly visible in the open countryside. Its prominent position makes it particularly harmful to the character and appearance of the SLA. Given the physical slope of the land adjoining the site I doubt that satisfactory landscaping could be implemented which would screen the bungalow without many years of growth. In any event screening would not overcome the objection to the principle of a new dwelling in the open countryside.

Recommendation

36. I recommend that planning permission be refused.



Inspector

Persons present at the site inspection

Mr D Carnegie and Mr R Hooper- Applicant's agents

Mr R Williams - Ceredigion CC

Cllr F Williams - Ceredigion CC