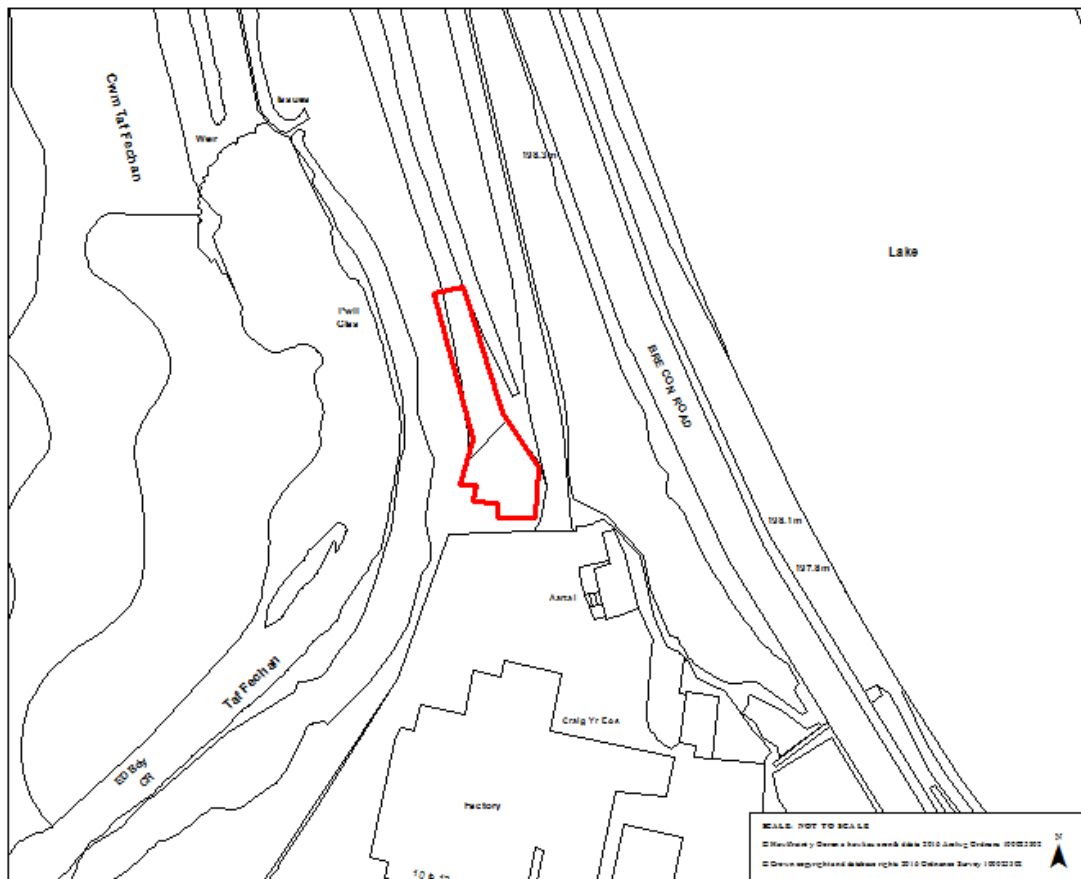


FOR INFORMATION – APPEAL DECISION

DATE WRITTEN	24 November 2016
REPORT AUTHOR	Judith Jones
CASE OFFICER	David Cross
COMMITTEE	Planning and Regulatory
COMMITTEE DATE	7 December 2016

Application No. P/16/0010	Date 12.01.2016	Determining Authority MTCBC
Proposed Development	Location	Name & Address of Applicant/Agent
The siting of a mobile home for residential purposes	Land North West Of Aartel Bungalow Efi Astex Industrial Estate Merthyr Tydfil	Mr Chris Marshall c/o Green Planning Studio Ltd F.a.o. Mr M Green Unit D Lunesdale Upton Magna Business Park Upton Magna, Shrewsbury, Shropshire SY4 4TT



TYPE OF APPEAL: AGAINST REFUSAL
APPEAL REFERENCE NO.: APP/U6925/A/16/3151450
DATE DECISION RECEIVED: 23.11.2016
DECISION: ALLOWED

ELLIS COOPER
DEPUTY CHIEF EXECUTIVE



Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 29/09/16
Ymweliad â safle a wnaed ar 29/09/16

gan Aidan McCooey BA MSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 23 Tachwedd 2016

Appeal Decision

Hearing held on 29/09/16

Site visit made on 29/09/16

by Aidan McCooey BA MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 23 November 2016

Appeal Ref: APP/U6925/A/16/3151450

Site address: Land northwest of Aartel Bungalow, EFI Astex Industrial Estate, Brecon Road, Merthyr Tydfil, CF47 8RB

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 Chris Marshall against the decision of Merthyr Tydfil County Borough Council.
 - The application Ref P/16/0010, dated 3 December 2015, was refused by notice dated 7 March 2016.
 - The development proposed is the siting of a mobile home for residential purposes.
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Decision

1. The appeal is allowed and planning permission is granted for the siting of a mobile home for residential purposes at Land northwest of Aartel Bungalow, EFI Astex Industrial Estate, Brecon Road, Merthyr Tydfil, CF47 8RB in accordance with the terms of the application, Ref P/16/0010, dated 3 December 2015, and the plans submitted with it, subject to the following conditions:
 1. No more than one caravan, as defined in the Caravan Sites and Control of Development Act 1990 and the Caravan Sites Act 1968 shall be stationed on the site at any time.
 2. Within 3 months of the date of this decision a scheme for the disposal of foul water shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation. The scheme shall be implemented in accordance with the approved details and retained in perpetuity.
 3. Any caravan located on the site shall be equipped with acoustic ventilators in compliance with BS 3632:2005.

Main Issue

2. I consider that the main issues in this case are the effect of noise and disturbance on the occupiers of the residential unit as a result of its location adjacent to industrial and
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commercial premises and any potential impact on those industrial and commercial operations because of the presence of a residential unit on the site.

Reasons

3. The site is located near an established industrial estate within the built-up area of Merthyr Tydfil. The access to the industrial estate is off Brecon Road, near the entrance to Cyfartha Castle. The access slopes down from Brecon Road, running through an area of mature trees. The site is close to the access road. It consists of a compound surrounded by fencing and is currently occupied by some stables and two caravans. A new storage building is within the fenced area, but has been excluded from the appeal site. It has recently received planning permission.
4. Policy BW 7 of the Merthyr Tydfil Local Development Plan 2006 – 2021 requires that development should not result in unacceptable impact on local amenity in terms of disturbance and traffic movements (amongst other criteria). Planning Policy Wales 9¹ (PPW) states that residential development in the vicinity of existing industrial estates should be restricted if the presence of houses is likely to lead residents to try to curtail the industrial use. TAN 11² states "Local planning authorities should consider whether proposals for new noise-sensitive development would be incompatible with existing activities, taking into account the likely level of noise exposure at the time of the application and any increase that may reasonably be expected in the foreseeable future. Such development should not normally be permitted in areas which are, or are expected to become, subject to unacceptably high levels of noise and should not normally be permitted where high levels of noise will continue throughout the night".
5. Planning permission for this use has been previously refused on two occasions for a similar reason to the current application. The most recent decision was the subject of an appeal³, where the Inspector concluded that the occupiers of the residential unit would be subjected to unacceptable noise and disturbance from operations on the industrial estate. The noise sources referred to were fork lift trucks, delivery activity and vehicles passing close to the site. The background to the existing industrial estate is that it is well established and general industrial uses are permitted and in operation thereon.
6. The appellant submitted a noise report or sound survey with the application in order to provide objective evidence on the concerns raised by the Council and the Inspector in the earlier appeal. The survey was undertaken on 2 & 3 November 2015. TAN 11 (as updated) refers to the use of BS 4142:2014 as an appropriate standard for assessing the impact of industrial and commercial noise. The survey used BS 4142:2014 and also BS 8223:2014 for assessing internal noise impacts including noise levels over a longer night time period. The results of the survey indicate that the industrial and commercial noise as measured was well below the thresholds set in BS 4142:2014, BS 8223:2014 and World Health Organisation guidelines.
7. The Environmental Health Officer broadly accepted the results and that the survey had been correctly undertaken. The Council's concerns were the basic incompatibility of residential use next to industrial uses and that the circumstances of the industrial uses

¹ Planning Policy Wales Edition 9, paragraph 9.3.2

² Technical Advice Note 11 Noise, October 1997, as updated on 25 November 2015

³ APP/U6925/A/15/3033319, dated 22 September 2015

could change in terms of the businesses involved and/ or their methods of operation. The sound survey addressed this point by including analysis for uncertainty which indicates that there is considerable scope for variation in existing conditions without increasing noise to a level that would not meet the thresholds. The evidence indicated that the existing noise sources would have to increase eight-fold to exceed the thresholds.

8. The Council and objectors questioned how representative this survey was; being a snapshot in time outside the peak trading months for one business. There was no evidence to indicate that the survey was not representative of the activities on site. The author had been present throughout and had witnessed the activities referred to by the Council and the previous Inspector taking place i.e. forklift trucks reversing and delivery vehicles movements. In addition he observed electric band saws in operation in the nearby joinery unit with the doors open. The sound survey included penalties for the reversing warning sirens and clattering sounds of the forklift trucks. This addresses the Council's concerns in this regard.
9. The other issue raised is the potential impact on the existing industrial businesses contrary to PPW. Several of the businesses objected to the proposal on these grounds. The industrial units do not have conditions restricting their use or hours of operation. The current uses generate traffic movements close to the proposal. Fork lift trucks are used to transfer goods and materials between units occupied by the largest business on the site. The Environmental Health Officer stated that noise complaints are assessed against the existing character of the area and that it was therefore highly unlikely that any action could be taken in relation to noise complaints from the occupiers of the appeal site.
10. The owner of Riverside bungalow attended the hearing. This property is located in the middle of the industrial estate. She has lived there for around 30 years and has not had any issues with noise including that of lorries and forklift trucks. The units do not operate much beyond 17:00; she had never heard anything at night. Her garden is not affected and her grandchildren play there untroubled by noise.
11. I acknowledge the concerns regarding noise from the adjacent units and passing traffic or deliveries. The planning witness had difficulty hearing the appellant speak on site during one visit. I have visited the site on several occasions and witnessed the noise sources associated with the units facing north that are closest to the appeal site. The units to the south are screened from the appeal site by buildings and do not add significantly to the noise impact. The evidence before me is more extensive and objective than that available to the Inspector in 2015. The results of the noise survey have not been challenged by any contrary survey or objective evidence. I must assess the proposal on the basis of the evidence and the conditions that prevail at the time of making this decision. There was no evidence that circumstances are going to change. The local resident stated that some of the firms have been there longer than she has and that the largest business has been operating for 10 years. In the final analysis, given the evidence of the Environmental Health Officer on future complaints, the only possible future issue would be for the appellant and other occupiers of the residential unit. The evidence confirms that the effect on living conditions in this particular case is not so severe as to warrant the refusal of planning permission on these grounds.
12. It was indicated that noise attenuation measures including the use of acoustic ventilators to ensure that the windows remain closed at night would meet the standards in BS 8233:2014. It was argued that the existing fence provides adequate

attenuation of noise and a 3m acoustic fence would not therefore be required. The Council queried the extent of the attenuation based on inputting the figures into an online tool. The appellant's witness countered that the calculations had been undertaken properly using the appropriate references. Even if the Council's figure were correct then the proposal would still meet the required standards without the acoustic fence. There remained some concerns regarding the outside amenity space, given the line of sight to some noise sources. However, the survey indicated that this too met the appropriate standards and therefore TAN 11. I conclude that the proposal complies with LDP Policy and national policy on the basis of the information before me.

13. The site is in Cyfartha Conservation Area but it is within an enclosed compound with an existing storage building and stables. It has a close visual association with the existing industrial estate. Wider views of the site are screened by trees and topography. The same applies to nearby listed buildings and scheduled ancient monuments. My assessment is that the impact on the character and appearance of the Conservation Area and on the settings of designated heritage assets would be negligible. The statutory and policy tests for the impact on heritage assets would be met. This was the view of the Council and the previous Inspector also.
14. It was claimed that the compound fencing blocks a right of way. This is unrelated to the proposal before me. The Council informed me that there is no public right of way on the site and the fencing cannot have any effect on public rights of way. Concerns were raised regarding parking on the industrial estate. The proposal would provide ample parking within the existing compound. The increased use of the existing access to the industrial estate would not be significant. The access road is relatively short and passable with care for pedestrians. Indeed, I witnessed several walkers using the route during my site visits.
15. The appellant confirmed that gypsy/traveller and Human Rights considerations were not relevant to this appeal. As I have found the development to be acceptable in its own right I do not need to consider its benefits in terms of supply of housing in the area.
16. The Council considers that a satisfactory means of foul drainage can be achieved. The previous Inspector considered that this matter could be addressed by a condition and I agree. The suggested wording was not questioned. The parking arrangements were considered to be satisfactory for one caravan and it is therefore necessary to restrict the number of caravans on the site to one. The Council had suggested that details of noise attenuation measures should be submitted for approval. However the Local Planning Authority resiled from that position at the hearing because the application was for a change of use and not for a particular caravan/ mobile home. The sound survey relied on appropriate ventilation being installed in the caravan. The agent confirmed that this was a requirement of BS 3632:2005. I consider that a condition requiring any caravan sited under this planning permission to have appropriate ventilation to comply with this standard would meet the legal tests. In the event of a complaint from the occupiers regarding noise at night then the Council could refer to this condition in response. As the evidence demonstrates that the noise levels do not exceed the relevant standards, there would be no justification for a personal planning permission, which was suggested by the Council.

Conclusion

17. Evidence has been presented that addresses the single reason for refusal, the objectors' submissions and concerns raised in the earlier appeal decision. The proposal would comply with LDP and national policy on noise impacts and would not prejudice the existing industrial operations nearby. Having considered all the evidence, I conclude that the appeal should be allowed and that planning permission should be granted.

A L McCoey

Inspector

Appearances

Appellant

Mr Matthew Green

Agent of Green Planning Studio

Mr Tim Green MIPS

Noise Witness of Tim Green Sound

Local Planning Authority

Mr David Cross BSc MA, MRTPI

Development Management

Ms Aileen Rahilly

Environmental Health Officer

Mr Craig Watkins

Policy Officer

Supporters

Mr Mark Howell

Local Landowner

Mrs Janette Murdoch

Resident of EFI Astex Industrial Estate

Documents

Hearing Statement and Appendices from Agent

Plan of Efi Astex Industrial Estate from the Council