



VALE OF GLAMORGAN COUNCIL

**TOWN AND COUNTRY PLANNING ACT 1990
(as amended)**

Section 78 Appeal

WRITTEN STATEMENT

**Appeal by Mr. Nicholas Rubenstein
Site at Woodside Hamlet, Ham Manor, Llantwit Major**

**TOWN AND COUNTRY PLANNING (REFERRED APPLICATIONS AND APPEALS PROCEDURE) (WALES)
REGULATIONS 2017**

PLANNING INSPECTORATE REF. NO: APP/Z6950/A/19/3223102

VALE OF GLAMORGAN REF. NO: 2016/01160/OUT

1. INTRODUCTION

1.1 This appeal relates to the decision of the Vale of Glamorgan Council to refuse planning permission for 'Proposed tourist (Tree Tent) accommodation development on land adjacent to Woodside Hamlet, with associated parking, wash up and toilet facilities' at Woodside Hamlet, Ham Manor, Llantwit Major.

1.2 The application was registered on 15th December, 2017, and subsequently REFUSED planning permission on 1 February 2019 for the following reason:

1. *By virtue of its location relative to nearby residential properties and proposed means of access through the Ham Manor Estate, the proposed use of the site for tourist (Tree Tents) accommodation development, with associated parking, wash up and toilet facilities, represents an unneighbourly form of development that would unreasonably affect the amenity of nearby residential properties. The proposed use is therefore considered contrary to LDP Policy MD2(8) which requires development proposals to safeguard existing public and residential amenity, particularly with regard to noise and disturbance.*

2. THE SITE AND ITS SURROUNDINGS

2.1 The appeal site is an area of mixed woodland to the south of Llantwit Major with access gained from the Ham Manor Park residential park to the south.

2.2 The site lies adjacent to the settlement boundary of Llantwit Major as defined in the Vale of Glamorgan Local Development Plan 2011-2026 and, as such, the site is located in the countryside. Despite the countryside location, the site is directly adjacent to a residential area that is to the north of the site. The residential caravan park is to the east and number of holiday lodges are directly adjacent and to the south of the site. There are significant site levels differences at the site, which mean that the woodland floor is approximately 5 metres lower than the adjacent land.

2.3 The location of the appeal site, highlighting its relationship with the immediate surroundings, is identified on the location plan attached in Appendix 1. An

aerial photograph of the appeal site from 2017 is attached in Appendix 2, and photographs of the site and its surroundings are attached in Appendix 3.

3. DETAILS OF DEVELOPMENT

- 3.1 The application subject of the appeal proposed a use of the site for tourist accommodation in the form of 'tree tents', with associated works. The application was made in outline and sought consent for access and appearance, with other matters including scale, layout and landscaping reserved for future consideration. The proposal was for 11 tree tents and associated structures to be sited within the woodland to be used as seasonal tourist accommodation between March and October.
- 3.2 The indicative plans show accommodation for 11 no. tree tents and ancillary infrastructure, including shower/toilet facilities and 2 no. bridges to provide pedestrian access across the River Hoddnant (which runs centrally through the site) from the proposed car parking area to the south-west of the site

4. RELEVANT PLANNING POLICIES

Local Planning Documents

- 4.1 The Development Plan for this area comprises the Vale of Glamorgan Adopted Local Development Plan 2011-2026 (LDP), which was formally adopted by the Council on 28 June 2017. The policy within the Plan that is most relevant to this appeal is as follows:

- MD2 – Design of New Development

- 4.2 An extract of the LDP relating to the above policy has previously been provided in the Council's questionnaire.

National Planning Policy and Guidance

- 4.3 National planning guidance issued in the form of Planning Policy Wales, Edition 10 2018 (PPW) is of relevance to this appeal. Paragraph 5.5.2 states as follows:

“The planning system encourages tourism where it contributes to economic development, conservation, rural diversification, urban regeneration and social inclusion, while recognising the needs of visitors and those of local communities. The planning system can also assist in enhancing the sense of place of an area which has intrinsic value and interest for tourism. In addition to supporting the continued success of existing tourist areas, appropriate tourism-related development in new destinations is encouraged. In some places however there may be a need to limit new development to avoid damage to the environment or the amenity of residents and visitors” (my emphasis).

5. THE LOCAL PLANNING AUTHORITY’S CASE

- 5.1 Having regard to the reason for refusal of the subject application, the principal issue in this appeal is considered to be the impact of the development upon amenity of the neighbouring occupiers.
- 5.2 As noted from the officer’s report, the site is located within relatively close proximity to the Ham Manor residential caravan park; converted buildings to the South West; the residential estate at Raglande Court and Whitewell Drive to the north and a further dwelling, Ham Lodge, to the East. Criterion 8 of LDP policy MD2 requires new development to “Safeguard existing public and residential amenity, particularly with regard to privacy, overlooking, security, noise and disturbance” (emphasis added). The policy requirement, therefore, is to maintain the *status quo* where possible.
- 5.3 Whilst it is noted that the indicative site layout proposes the tree tents (or pods) close to the lodges to the south of the site, it is accepted that these are also forms of tourism accommodation, having been granted permission on the basis that their occupation is limited to holiday makers. The indicative layout does, however, bring some of the pods and, therefore, the associated holiday activity close to the permanent dwellings within Raglande Court and close to (although to a lesser degree) some of the residential caravans on the adjoining Ham Manor estate. Bearing in mind the application proposes a use of the site as a whole for tourism, , the activity associated with holiday makers, which would generate the noise and disturbance that is of concern to the Council, would be as close as a few metres to the dwellings and gardens of some of the residents of Raglande Court, even though the pod

accommodation is set within the site

- 5.4 Due to the nature of the tented accommodation and the likelihood of holiday makers living more in the open, there would be little suppression of noise generated on the site. The Officer's report acknowledges that *"The noise that could potentially be generated by the use relates to the possible volume of multiple voices, movements and activities of those attending the site at different times of the day and night"*. It is also acknowledged that it is expected that the *"levels of noise may increase with the change of use and type of accommodation proposed"* and that *"nearby properties may be affected without adequate management and controls"*. Whilst it is accepted that there is a manager's accommodation within the site, it is inevitable that a certain level of noise and activity will be tolerated on the site to avoid the site being over policed. Whilst the officer concludes that the number of pods is modest, it is the Council's concern that the provision of 11 units of accommodation and the use of the whole of the site for this tourism related use will result in a level of noise and disturbance within close proximity to a number of residential properties. It is the Council's view that this noise and disturbance will negatively impact upon the amenities of the nearby residents, particularly those in Raglande Court. As such, the development will not safeguard the level of amenity that these nearby residents enjoy, as required by LDP policy MD2.
- 5.5 In addition to this, the development will bring additional tourism traffic through the Ham Manor residential caravan park. There are a significant number of caravans occupied on a permanent basis that line the route of the access to the tree tent site. The occupiers of these units already experience the noise and disturbance from all traffic to and from the wider Ham Manor estate, including all traffic associated with Rosedew Farm itself, traffic to and from Rosedew farm solar farm, the Acorn Camping site, the new tourism units recently constructed at the Walled Garden for at Rosedew Farm and all traffic to Ham Manor residential caravan park. All of these have their only or primary means of access via the private road through Ham Manor, which is the access to the appeal site. Having regard to the impact of the existing traffic movements to the above-mentioned sites, the additional noise and

disturbance from both pedestrian and vehicle traffic associated with the tree tent activity is considered to tip the balance towards an unacceptable degree of impact upon the amenity of the occupiers of these units.

5.6 The Council's concerns in this case are supported by the significant number of objections to the application. Some of these local residents have the everyday experience of the noise and disturbance caused by holiday makers using the existing holiday accommodation adjacent to the appeal site. The volume of objections to the application demonstrates the level of concern with regard to the additional impact of the proposed scheme from those who experience the site as it exists, particularly as the additional impact will result from a development that is closer to the nearby residential properties than the existing holiday accommodation at Ham Manor.

5.7 In view of the findings above, it is the Council's case that the development will fail to safeguard the existing amenities of the nearby residents by virtue of the noise and disturbance resulting from the proposed use. As such, the development will conflict with criterion 8 of LDP policy MD2.

6. RESPONSE TO THE COSTS APPLICATION

6.1 It is noted that the appellant has made an application for costs in this appeal. It is suggested that that the refusal of the subject application is not supported by evidence or the Council's professional officers.

6.2 Whilst it is accepted that the Council's officers recommended the application subject of this appeal for approval, and that the decision was overturned at the Council's planning Committee, it does not necessarily follow that an application for the award of costs is automatically granted. Indeed, this principle is set out in the Welsh Government Development Management Manual Paragraph 3.9 states:

“Local planning authorities are not bound to adopt, or include as part of their case, the professional or technical advice given by their own officers or received from statutory consultees. However, they are expected to show that they had reasonable planning grounds for taking a decision

contrary to such advice and that they are able to produce relevant evidence to support their decision”.

- 6.3 For the application for costs to be successful, it must be demonstrated that the Council has acted unreasonably in refusing the planning application and that the appellant has been put to unnecessary costs as a result of this unreasonable behaviour. In this regard it is noted that the reason for refusal of the application is on the basis of impact on the amenity of the neighbouring occupiers. Such an impact is not quantifiable; it cannot be measured. Any assessment of impact on amenity is subjective. It is a matter of judgement, having regard to the context of the site and the extent of development proposed.
- 6.4 Whilst the Officers have had regard to the distance of the proposed tree tents from the neighbouring properties and have made their judgement on this basis, the officers cannot be aware of the everyday experiences of local residents, particularly of noise and disturbance they experience from the use of the existing holiday accommodation adjacent to the appeal site. The addition of the proposed holiday accommodation will not only increase as a whole on the Ham Manor site the noise and disturbance that is naturally associated with holiday makers, but will bring that noise and disturbance closer to the residential estate adjacent to Mill Lay Lane. The Officer's report acknowledges this, although it concludes, on balance, that the impact will not be unacceptable.
- 6.5 With regard to the evidence to support the refusal of the subject application, the Council would suggest that is it the volume of objections and the concerns expressed by local residents that provides the support for the reason for refusal of the application. As mentioned above, these residents have the everyday experience of the noise and disturbance caused by holiday makers using the existing holiday accommodation adjacent to the appeal site. The volume of objections to the application demonstrate the level of concern with regard to the additional impact of the proposed scheme and support the Council's concerns in this case. It is the Council's view that these concerns are legitimate and reasonable. Even if they are not ultimately supported by

the Inspector in this case, the Council would contend that it has not acted unreasonably in refusing the subject application.

7. LIST OF SUGGESTED CONDITIONS

7.1 Should the appointed Inspector be minded to allow this appeal, the Vale of Glamorgan Council considers that the following conditions should be imposed:

1. Details of the siting, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

2. Any application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

3. The development shall begin either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

4. The development shall be carried out in accordance with the following approved plans and documents:

- Tree Survey received 27 September 2016
- Site Survey 1068_PA201 C received 7 November 2016
- Design and Access Statement received 1 December 2017

- Site Location Plan draw ref 1068_PA200 received 1 December 2017
- Email with additional Ecology Matters received 15 December 2017
- Site Plan Proposals draw ref 1068_PA203 received 15 December 2017
- Tree Tent Facilities 1068_PA205
- Bridge, wash, shower and refuse details 1068_PA206 Received 11 January 2018
- Updated Ecological assessment received 25 October 2018

Reason: For the avoidance of doubt as to the approved development and to accord with Circular 016:2014 on The Use of Planning Conditions for Development Management.

5. The site shall not be occupied by more than 11 units of accommodation. Each unit of accommodation shall comprise either a single or double tree tent pod and platform arrangement as shown on plan number MDS 1068/PA205.
6. The site shall only be used between 1st March and 31st October in any calendar year.

Reason: For the avoidance of doubt and to enable the Local Planning Authority to retain control over the use of the site, in accordance with Policy MD1 Location of New Development and MD2 Design of New Development of the Local Development Plan

7. The toilet/shower and wash up and refuse facilities buildings shall be carried out in accordance with the scale parameters set out on the supplementary site details drawing MDS 1068/PA206 and are as follows:
 - Maximum height 2.75 metres
 - Maximum width 4 metres
 - Maximum length 6 metres

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 and to ensure a satisfactory form of development in accordance with Policy MD2 (Design of New

Development) of the Local Development Plan.

8. All means of enclosure associated with the development hereby approved shall be completed in accordance with a scheme to be submitted to and agreed in writing by the Local Planning Authority. The use of the site shall not commence until the means of enclosure have been completed in accordance with the approved details.

Reason: To safeguard local visual amenities, and to ensure compliance with Policies SP1 (Delivering the Strategy) and MD2 (Design of New Development) of the Local Development Plan.

9. The use shall not commence until the car parking spaces have been laid out within the site in accordance with Drawing No. MDS1068/PA203 Rev F. The car parking spaces shall thereafter be kept available for the parking of vehicles associated with this development in perpetuity.

Reason: To ensure that satisfactory vehicle parking and turning facilities is provided on site to serve the development, and to ensure compliance with the terms of Policies SP1 (Delivering the Strategy) and MD2 (Design of New Developments) of the Local Development Plan.

10. The use shall not commence until facilities for the secure storage of 5 No. cycles have been provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The cycle storage area shall thereafter be kept available for the storage of bicycles in perpetuity.

Reason: To ensure that satisfactory parking for cycles is provided on site to serve the development, and to ensure compliance with the terms of Policies SP1 (Delivering the Strategy), MD1 (Location of New Development) and MD2 (Design of New Developments) of the Local Development Plan.

11. The use shall not commence until foul, land and surface water

drainage has been implemented in accordance with a scheme that shall first have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a drainage strategy which should explore all opportunities for sustainable surface water management. The foul, land and surface water drainage shall thereafter be retained in perpetuity.

Reason: To prevent hydraulic overloading of the public sewerage system, pollution of the environment and to protect the health and safety of existing residents and ensure no detriment to the environment and to comply with the terms of Policies SP1 (Delivering the Strategy) and MD1 (Location of New Development) of the Local Development Plan.

12. No development shall take place until a method statement setting out the measures to be taken to minimise the impact of any works on protected species both during and after the construction phase have been submitted to and agreed in writing by the Local Planning Authority. The development and use shall thereafter be carried out in accordance with the approved details.

Reason: In the interests of ecology and to ensure compliance with Policies SP1 (Delivering the Strategy) and MG21 (Sites of Importance for Nature, Regionally Important Geological and Geomorphological Sites and Priority Habitats and Species) of the Local Development Plan.

13. Any removal of ground flora and leaf litter shall be carried out between the months of April and October.

Reason: In the interests of ecology and to ensure compliance with Policies SP1 (Delivering the Strategy), MD9 (Promoting Biodiversity), MG19 (Sites and Species of European Importance), MG20 (Nationally Protected Sites and Species) and MG21 (Sites of Importance for Nature, Regionally Important Geological and Geomorphological Sites and Priority Habitats and Species) of the Local Development Plan.

14. Any vegetation clearance must be undertaken outside the nesting season, which is generally recognised to be from March to August inclusive, unless it can be first demonstrated that nesting birds are absent.

Reason: In order to ensure that no protected species are adversely affected by the development and to ensure compliance with In the interests of ecology and to ensure compliance with Policies SP1 (Delivering the Strategy), MD9 (Promoting Biodiversity), MG19 (Sites and Species of European Importance), MG20 (Nationally Protected Sites and Species) and MG21 (Sites of Importance for Nature, Regionally Important Geological and Geomorphological Sites and Priority Habitats and Species) of the Local Development Plan.

15. Prior to the erection of any lighting, details of lighting shall be submitted to and approved in writing by the Local Planning Authority. All lighting on site shall be limited to the insides of the tree tents and cabins. There shall be no lighting in the wider woodland, at the watercourses or amongst the trees. Prior to the commencement of the use the lighting details shall be implemented in accordance with the approved details and the site shall thereafter be used in accordance with the approved details.

Reason: In the interests of ecology and to ensure compliance with the interests of ecology and to ensure compliance with Policies SP1 (Delivering the Strategy), MD9 (Promoting Biodiversity) and MG21 (Sites of Importance for Nature, Regionally Important Geological and Geomorphological Sites and Priority Habitats and Species) of the Local Development Plan.

16. The use of the site shall be managed in accordance with a site management plan, the details of which shall have first been submitted to and approved in writing by the Local Planning Authority. The site management plan shall include, but not be limited to the following details:

- Management of noise.
- Details of quiet times.
- Management of amplified music.
- Waste disposal.
- The presence of the site manager.

Reason: To limit the impact of the development on the amenity of nearby residents and to comply with Policy MD2- Design of New development of the Local Development Plan.

17. No development shall commence until a detailed management plan for the treatment of Japanese Knotweed on site is submitted to and approved by the Local Planning Authority. The use hereby approved shall not commence until Japanese Knotweed has been treated in accordance with the approved details.

Reason: In the interests of ecology and to ensure compliance with the interests of ecology and to ensure compliance with Policies SP1 (Delivering the Strategy) and MD9 (Promoting Biodiversity) of the Local Development Plan