



# **VALE OF GLAMORGAN COUNCIL**

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

**Section 78 Appeal**

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## **WRITTEN STATEMENT**

**Appeal by Ms E Davey  
Site at Heol Las Farm, Llangan**

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

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**PLANNING INSPECTORATE REF. NO: APP/Z6950/A/20/3251193**

**VALE OF GLAMORGAN REF. NO: 2019/01246/FUL**

**Marcus V. Bayona-Martinez BSc  
Planning Officer (Appeals and Enforcement)**

**Vale of Glamorgan Council,  
Dock Office,  
Barry.  
CF63 4RT**

## 1. INTRODUCTION

- 1.1 This appeal relates to the decision of the Vale of Glamorgan Council to refuse planning permission for the conversion of a holiday let to a residential annexe at Heol Las Farm, Llangan.
- 1.2 The application was registered on 14<sup>th</sup> of November 2019, and subsequently refused planning permission on 31<sup>st</sup> January 2020 for the following reasons:
1. The applicant has failed to demonstrate that the proposed building has been appropriately marketed for other alternative non-residential uses such as farm diversification, business, community, recreational uses; and has failed to show that the current tourism use is not economically viable. Consequently, the proposal would, without justification, result in the loss of an existing rural tourism site, contrary to the policy presumption in favour of the retention of such uses, and it would, therefore, adversely impact upon the supply of tourist accommodation within the Vale of Glamorgan and consequently, the rural economy. The development is, therefore, contrary to Policy MD13 – Tourism and Leisure as well as Criterion 3 of Policy MD11 of the Adopted Local Development Plan 2011-2026.
  2. By reason of its size and location, and the insufficient physical and functional link to the house, the proposal represents a new dwelling as opposed to an annexe. Consequently and by virtue of the distance to any defined settlement, the absence of adequate pedestrian/alternative modal links to the nearest settlement, and the relative absence of services within close proximity to the site, the proposed development is considered to be an unsustainable dwelling where occupiers would be remote from day to day amenities/services and over-reliant on the private car. The proposal is consequently contrary to Policies SP1, MD1, MD2 and MD11 of the LDP and the advice within Planning Policy Wales (10th edition).

## **2. THE SITE AND ITS SURROUNDINGS**

- 2.1 The appeal site relates to a detached, single storey barn located at Heol Las Farm, Llangan. The site is located in the open countryside, to the west of the farmhouse at Heol Las Farm and approximately 400 metres west of the village of Llangan. Planning permission ref. 2010/00973/FUL granted permission in 2010 for the barn to be used as tourist accommodation.
- 2.2 The location of the appeal site, highlighting its relationship with the immediate surroundings, is identified on the location plans attached in Appendix 1. An aerial photograph of the appeal site is attached in Appendix 2, and photographs of the site and its surroundings are attached in Appendix 3.

## **3. DETAILS OF DEVELOPMENT**

- 3.1 Details of the refused development are given in the officer report, which has been provided with the Local Planning Authority (LPA) questionnaire in response to question 22e.

## **4. PLANNING HISTORY**

- 4.1 Details of the planning history of the site are given in the officer report which has been provided with the LPA questionnaire in response to question 22e.

## **5. RELEVANT PLANNING POLICIES**

### **Local Planning Documents**

- 5.1 The local and national planning policies which are relevant to this appeal are given in the officer report provided in the LPA questionnaire in response to question 22e.
- 5.2 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. Extracts of relevant policies from the LDP have been provided within the LPA questionnaire, in response to question 22g.
- 5.3 Extracts from relevant Supplementary Planning Guidance documents, which

support the LDP, have been provided within the LPA questionnaire, in response to question 22h.

## **6. THE LOCAL PLANNING AUTHORITY'S CASE**

6.1 The officer's report for the application subject to this appeal is considered to be comprehensive and clearly states the LPA's case and the policies upon which the decision to refuse planning permission is based. In reaching the reasons for refusal, the officer's report identifies that development was not acceptable, as the proposals would result in the unjustified loss of a rural tourism site, and create an unsustainable form of development, remote from day to day amenities and services, which would mean that the occupiers would be over-reliant on the private car.

### *Relationship of barn to main dwelling*

6.2 Whilst not explicitly identified in the officer report, it is the LPA's view that as part of the current appeal, consideration should be given to the physical relationship of the barn building to the main dwelling, which would support the second reason for refusal.

6.3 The officer's report identifies that the barn is not located within the curtilage of Heol Las Farm. It is considered that this physical relationship is essential in establishing whether or not there is a functional relationship between the appeal site and Heol Las Farm and therefore, whether or not it is possible for the appeal building to be considered as ancillary accommodation. Indeed, it could be the case that the grant of planning permission for the use of the barn as ancillary accommodation would, by default, incorporate the barn into the curtilage, or planning unit, that comprises Heol Las Farm. The use of this building as ancillary accommodation would then become an integral part of the main use of the planning unit as a single dwelling house, as identified in Section 55 (3) (a) of the Town and Country Planning Act 1990. The LPA would submit that failure to achieve this means that the accommodation cannot be considered ancillary.

6.4 Fundamentally, the barn does not form a part of the curtilage of Heol Las

Farm at present and would not, even if the alterations suggested by the appellant were implemented (being the removal of the fence between the barn and Heol Las Farm and the blocking up of the entrance to the west of the barn). In the case of *Attorney General ex rel Sutcliffe v Calderdale MBC, 1982* (Appendix 4), three factors were utilised to determine the curtilage of buildings;

- *Ownership, historic and current; and*
- *Physical layout;*
- *Use or function, historic and current.*

6.5 Each case should be viewed on its own merits and each of the above three factors should be given their own weightings. With or without the alterations, the ownership of the two separate sites remains the same; owned by the appellant, addressing this part of the “test” simply.

6.6 Physically, at present, there is a clear divide between the appeal site and Heol Las Farm; being the fence. As a result, the two sites are physically divorced. Whilst there is less physical separation without the presence of the fence, the barn retains its own area that corresponds directly with it to the south. This is enclosed by a large agricultural building to the west and another building to the east and south (partially). When accessing the site through the single access point, the two plots would retain a degree of physical separation, being the forecourt of Heol Las Farm, and the removal of the fence by itself, would not overcome this.

6.7 In terms of the use, at present, the barn is being used as a holiday let and is undoubtedly a separate planning unit in its own right. This is exemplified by the fact that the Site Location Plan (Appendix 5) for the planning application (Ref. 2010/00973/FUL) to change the use of the barn to holiday accommodation only includes the barn and not Heol Las Farm. Historically, the use of the barn would have formed a part of the agricultural planning unit at the wider site and would not have formed part of the residential planning unit at Heol Las Farm, which extends east and encompasses the residential gardens it is served by to the rear.

6.8 The removal of the fence and permanent occupation of the barn would not alter this position. A vital point, with regard to identifying the curtilage, is that the use/function of this building as permanent residential accommodation would be tantamount to a separate dwelling, as outlined in some detail in the officer's report. A separate dwelling would form its own planning unit and would require its own curtilage, it could not exist as ancillary accommodation to the main dwelling. Therefore, it is not considered possible for the barn to exist as a residential annex within the curtilage of Heol Las Farm.

6.9 The sub-sections that follow seek to address specific issues raised by the appellant's grounds of appeal statement.

*Background (paragraphs 1.1 – 1.7)*

6.10 Paragraph 1.1 of the appellant's statement refers to informal advice given by an officer of the Local Planning Authority. It is clear from the officer's correspondence that no indication was given that any forthcoming application for the use of the barn as an annexe would be considered acceptable. Therefore, it is not considered that any weight should be given to this in the determination of the appeal.

6.11 The statement alleges at paragraph 1.2 that in the assessment of an application (ref. 2019/00811/FUL), which was subsequently withdrawn, for the use of the barn subject to this appeal as an annexe, the LPA held an *unsubstantiated perception* that the use of the barn as an annexe would not be ancillary to the use of the main dwelling house. The LPA consider this to be an unsubstantiated statement. Communication from the Officer during the assessment of the application referred to by the appellant, identifies the same concerns that are articulated in the officer's report relevant to this appeal. The officer's report relevant to this appeal clearly and effectively substantiates the LPA's position with regard to the use of the barn as an annexe building and supports this perception with evidence from a recent appeal decision.

*Consideration of Key Issues*

6.12 It is noted that reference has been made in paragraph 4.1 of the appellant's

statement to the decision notice dated 17<sup>th</sup> May 2019, however the correct date of the decision relevant to this appeal is 31<sup>st</sup> January 2020.

*LPA's Reason for Refusal 1 (Paragraphs 4.11- 4.25).*

- 6.13 Paragraph 4.13 suggests that the floor space ratio of the barn, when compared to the host dwelling, and the imposition of a condition requiring that the any occupation of the barn must be ancillary to Heol Las Farm would amount to ensuring that the barn would remain ancillary to Heol Las Farm. For the reasons outlined in paragraphs 6.3 to 6.8 of this statement, the officer's report and the points raised in the next section of this statement (paragraphs 6.22 - 6.29), this position is contested by the LPA.
- 6.14 Paragraph 4.15 of the appellant's statement suggests that the removal of condition 3 and the use of the barn as an annexe (as viewed by the appellant) instead of a holiday let, would not have to be considered against criterion 3 and 4 of LDP Policy MD11. The officer's report identifies why these criterion are relevant and are not complied with, however the LPA is of the view that further consideration is relevant to the determination of this appeal.
- 6.15 The view of the LPA is that if this were not the case, then otherwise unacceptable dwellings in the open countryside, which fail to meet the requirements of criterion 3 and 4, would regularly be approved through this defect in the policy. This would set a clearly undesirable precedent and potentially result in many new dwellings being created in unsustainable locations.
- 6.16 Whilst the building has already been converted, no exemption exists within the policy or the supporting text to suggest that MD11 would not apply if a further application were submitted for the use of the building as an independent dwelling house. Indeed, it is clear that the overarching aim of criterion 3 and 4 only allow residential development in the open countryside in very specific conditions, which do not apply in the case of this appeal.
- 6.17 This position is clarified by the excerpt provided below from paragraph 7.64 of the LDP which forms the supporting text of Policy MD11. The appellant

excludes this very relevant section of paragraph 7.64 of the LDP, when they quote a separate part of it in paragraph 4.18 of their statement. Paragraph 7.64 of the LDP specifies that proposals for residential conversions will be limited to tourist accommodation in more isolated locations. The excerpt from paragraph 7.64 referred to is shown below:

*In more isolated rural locations where residential development would otherwise not be acceptable, proposals for residential conversions will be limited to tourist accommodation and occupancy conditions will be imposed to prevent long term residential occupation.*

- 6.18 The principle of paragraph 7.64 would have been relevant when approving the use of the barn for tourist accommodation (approval was granted when a now superseded Unitary Development Plan (UDP) was relevant); this is what resulted in condition 3 being applied to this planning permission. The removal of the condition and subsequent occupancy of the barn as an independent dwelling house, as viewed by the LPA, would clearly be contrary to this position.
- 6.19 Notwithstanding the position taken by the appellant in paragraph 4.15, their statement goes on to address why their proposals may comply with criterion 4 in paragraphs 4.19 and 4.20, as less car journeys would be made to the site if it is used as permanent residential accommodation when compared to a holiday let. However, there is a strong policy emphasis in favour of tourism uses; they are promoted by Policies SP11, MG29 and MD13 of the LDP and also by the supporting text of Policy MD11 in this case. This policy presumption in favour of tourism uses allows for the requirements of criterion 4 of MD11 to be overcome, as specified by paragraph 7.64 of the LDP, which supports that approach. No such policy presumption exists for independent dwelling houses in the open countryside, instead there is a general local and national policy presumption against such proposals. The extract from the Ponstarn Farm appeal decision referred to in the officer's report clearly reiterates this position and a copy of the appeal decision is attached in Appendix 6.
- 6.20 Further to this, no evidence has been submitted to support the suggestion that



the occupation of the barn would result in less car movements. Indeed, if the business were failing, as suggested throughout by the appellant but never evidenced, then it would be very likely that the holiday let would not be in permanent use. Therefore, the occupation of the barn permanently would undoubtedly result in more car movements.

6.21 The suggestion in paragraph 4.21, that as the proposed development meets requirements set out in criterion 7 of policy MD1, is clearly outweighed by the failure to comply with the relevant criterion of policies MD11 and MD13.

6.22 Paragraphs 4.22 to 4.24 of the appellant's statement refer to compliance with policy MD13. Specifically, paragraph 4.23 suggests that policy MD13 is not relevant to this case, identifying paragraph 7.72 of the LDP (the supporting text of policy MD13) in support of this position. However, the LPA would suggest that the meaning of paragraph 7.72 in fact supports its position. The section of paragraph 7.72 emphasised by the appellant is clearly being used to support the retention of tourism uses, highlighting the demise of the tourism industry and need to be certain that a tourism site is unviable before granting permission for it to be converted to something new. This is clarified by the following sentence, which requires it to be demonstrated that a tourism facility is no longer economically viable. Paragraph 7.72 goes on to emphasise this, stating:

*The Council will require proposals to be supported by evidence that retention of the facility is no longer economically viable or required for tourism purposes.*

In the absence of any evidence submitted by the appellant throughout the course of this application to suggest that the tourism facility is not viable, it is clear that policy MD13 is not complied with.

*LPA's reason for Refusal 2.*

6.23 Before consideration is given to the appellant's statement, it is noted that the statement numbering reverts back to 1.16 and it is assumed that there has been a technical error with the paragraph numbering of the appellant's

statement of appeal. Paragraph 1.16 suggests that the officer's report in this case has been 'carried across' from another application, due to the appeal site being referred to as a 'barn'. This is not however a 'simple error' - fundamentally, the appeal site is a barn that is being used at present as a holiday let and therefore it is completely appropriate to refer to the building as a barn. In respect of the appellant's suggestion that the LPA's assessment and conclusions are not bespoke to this application, any detailed examination of the officer's report will demonstrate that this is clearly not the case. Even if this were not the case, however, paragraph 4.1 of the appellant's statement, which identifies an incorrect date in relation to the decision notice clearly demonstrates that a simple error can be made by reproducing information from another statement.

- 6.24 It is suggested in paragraph 1.17 that the occupiers of the barn would rely on Heol Las Farm for '*day to day residential functions*'. However, when considering the layout of the barn and available facilities, as shown on the proposed plans in the officer's report, it is unclear what day to day functions would not be able to be carried out within the barn and would therefore create any dependency on the main dwelling.
- 6.25 The appellant considers that a condition could be attached to the planning permission to require the barn to be ancillary to Heol Las Farm. However, for the reasons outlined in paragraphs 6.3-6.9 of this statement and the officer's report, a condition of this type would not be justifiable on its planning merits. It would not be enforceable, or possible to detect an infringement of the condition, because it is the view of the LPA that the permanent residential occupation of the barn would be tantamount to a new dwelling, and not an annexe that is ancillary to another dwellinghouse.
- 6.26 The view that the appeal site can be considered an annexe because it is approximately 27% of the floor space of Heol Las Farm is not shared by the LPA. It is undeniable that floor space is only one of a number of factors that must be considered when assessing whether a proposed annexe is ancillary. Whilst the appeal site is significantly smaller than Heol Las Farm, it is of a size that can sustain itself as an independent dwelling house and clearly

possesses all of the amenities to do so.

- 6.27 Three recent planning approvals for ancillary accommodation elsewhere within the Vale of Glamorgan are cited in both paragraphs 1.21 and 1.22 of the appellant's statement. These refer largely to the issue of floor space. Whilst it is considered that these permissions were granted based on their own planning merits and this appeal should be determined as such, the planning merits of each will be considered.
- 6.28 In the case of both planning permissions ref. 2017/00015/FUL and ref. 2019/00386/FUL it is clear that both application sites have a functional relationship with the main dwellinghouse. Primarily, they are both undoubtedly within the curtilage of the main dwellinghouse. Planning permission ref. 2017/00015/FUL grants permission for an annexe sited in place of a garage that previously had served the main dwellinghouse. Planning permission ref. 2019/00386/FUL granted permission for an annexe that physically adjoins the main dwellinghouse and internal links exist between the two buildings.
- 6.29 Paragraph 1.22 identifies that a condition was used to ensure the annexe approved by planning permission ref. 2019/00386/FUL remained ancillary to the main dwellinghouse. In the case of that application, the condition is wholly enforceable and justifiable on its planning merits. If this were not the case, as is the situation with regards to this appeal, planning permission would not have been granted.
- 6.30 Planning permission ref. 2017/00646/FUL was the result of a long running planning history at that site, with four relevant planning applications ranging as far back as 2003. The considerations relevant to that approval are complex and completely separate from those of this appeal site. Where approved, the historic applications were judged to be compliant with the relevant policies of the formerly adopted UPD. Simply because the annexe in the case of 2017/00646/FUL is larger than the barn which is the subject of this appeal is considered to be irrelevant and there are clearly a number of other matters that are more relevant to the determination of this appeal.

## **7. CONCLUSION**

- 7.1 For the reasons detailed above, as well as those identified in the officer's report, the proposed annexe is not considered to be accommodation that is, or could be made ancillary to Heol Las Farm. Therefore, it must be considered to be an independent dwelling. An independent dwelling in this location fails to satisfy the sustainability requirements of criterion 4 of Policy MD11. In addition, in the absence of any evidence to suggest that the holiday let, which exists at the barn at present, is unviable, the proposals fail to meet the requirements of Policy MD13 and criterion 3 of Policy MD11.
- 7.2 In view of the above, the proposed development is considered to be contrary to both local and national planning policy and the Inspector is respectfully requested to dismiss this appeal.

## **8. LIST OF SUGGESTED CONDITIONS**

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

1. The development shall begin no later than five years from the date of this decision.

Reason:

To comply with the requirements of Section 91 of the Town and Country Planning Act 1990.

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

- Site Location Plan, Received 14/11/19
- Drwg no.11, Proposed Plan, Received 14/11/19
- Drwg no. 10A, Proposed Elevations, Received 14/11/19

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.

3. The annexe hereby approved shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Heol Las Farm.

Reason:

To avoid the creation of a separate unit of residential accommodation, and to ensure compliance with the terms of Policies SP1 (Delivering the Strategy), MD2 Design of New Developments and MD11 Conversion and Renovation of Rural Buildings of the Local Development Plan.

4. Prior to the first beneficial use of the barn as accommodation ancillary to Heol Las Farm, the entrance, to the west of the annex approved by this planning permission, shall be blocked up and the fence, sited between the Heol Las Farm and the annex approved by this planning permission, shall be removed.

To ensure that the barn remains ancillary accommodation and to ensure compliance with the terms of Policies SP1 (Delivering the Strategy), MD2 Design of New Developments and MD11 Conversion and Renovation of Rural Buildings of the Local Development Plan.

5. Notwithstanding the provisions of Schedule 2, Part 2, Class A, of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that order with or without modification), no gate, fence, wall or means of enclosure shall be erected between the annex approved by this planning permission and Heol Las Farm.

To ensure that the barn remains ancillary accommodation and to ensure compliance with the terms of Policies SP1 (Delivering the Strategy), MD2 Design of New Developments and MD11 Conversion and Renovation of Rural Buildings of the Local Development Plan.

6. Notwithstanding the provisions of Schedule 2, Part 2, Class B, of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that order with or without modification), no new access onto the road to the north of the site at Heol Las Farm shall be created.

To ensure that the barn remains ancillary accommodation and to ensure compliance with the terms of Policies SP1 (Delivering the Strategy), MD2 Design of New Developments and MD11 Conversion and Renovation of Rural Buildings of the Local Development Plan.

6. Notwithstanding the provisions of Schedule 2, Part 1, Class A, of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that order with or without modification), the annexe approved by this planning permission shall not be extended or altered in any way.

To protect visual amenities of the open countryside and ensure compliance with the terms of Policies SP1 (Delivering the Strategy), MD2 Design of New Developments and MD11 Conversion and Renovation of Rural Buildings of the Local Development Plan.