

APPEALS

The following appeals have been decided since my last report to Committee:

CODE NO. C/19/3221289 (1855)
ENFORCEMENT NO. ENF/191/18/ACK

APPELLANT REV DR A J BROWN

SUBJECT OF APPEAL UNAUTHORISED USE FOR BED & BREAKFAST
TREE TOPS, 18 THE WOODLANDS, BRACKLA

PROCEDURE WRITTEN REPRESENTATIONS

DECISION LEVEL ENFORCEMENT NOTICE

DECISION THE INSPECTOR APPOINTED BY THE WELSH MINISTERS
TO DETERMINE THIS APPEAL DIRECTED THAT THE
APPEAL IS DISMISSED AND THE ENFORCEMENT NOTICE IS
UPHELD.

A copy of the appeal decision is attached as **APPENDIX A**

CODE NO. A/19/3225665 (1858)
APPLICATION NO. P/18/907/RLX

APPELLANT MR & MRS BATER

SUBJECT OF APPEAL VARY CONDITION 2 OF P/16/660/FUL TO PROVIDE A SOLID
SCREEN TO THE EAST FACING ELEVATION ONLY
WHITEHALL COTTAGE, PENYFAI

PROCEDURE WRITTEN REPRESENTATIONS

DECISION LEVEL DELEGATED OFFICER

DECISION THE INSPECTOR APPOINTED BY THE WELSH MINISTERS
TO DETERMINE THIS APPEAL DIRECTED THAT THE APPEAL
BE DISMISSED.

A copy of the appeal decision is attached as **APPENDIX B**

CODE NO. A/19/3225665 (1857)
APPLICATION NO. P/18/547/FUL

APPELLANT MR SHAUN MIDDLETON

SUBJECT OF APPEAL REGULARISATION OF EXTERNAL FINISHES TO DWELLING
THE HAVEN, 21 ABERGARW MEADOW, BRYNMENYN

PROCEDURE

WRITTEN REPRESENTATIONS

DECISION

THE INSPECTOR APPOINTED BY THE WELSH MINISTERS
TO DETERMINE THIS APPEAL DIRECTED THAT THE APPEAL
BE ALLOWED SUBJECT TO CONDITIONS.

A copy of the appeal decision is attached as **APPENDIX C**

RECOMMENDATION

That the report of the Group Manager Planning & Development Services be noted.

JONATHAN PARSONS

GROUP MANAGER PLANNING & DEVELOPMENT SERVICES

Background Papers

(see application reference number)



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 04/06/19

gan Vicki Hirst BA (Hons) PG Dip TP
MA MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 05.07.2019

Appeal Decision

Site visit made on 04/06/19

by Vicki Hirst BA (Hons) PG Dip TP MA
MRTPI

an Inspector appointed by the Welsh Ministers

Date: 05.07.2019

Appeal Ref: APP/F6915/C/19/3221289

Site address: Tree Tops, 18 The Woodlands, Brackla, Bridgend, CF31 2JF

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Rev Dr AJ Brown against an enforcement notice issued by Bridgend County Borough Council.
 - The enforcement notice, numbered ENF/191/18/ACK, was issued on 20 December 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the property known as 18 The Woodlands, Brackla to a mixed use of residential and bed and breakfast.
 - The requirements of the notice are to cease the use of the property as a bed and breakfast.
 - The period for compliance with the requirements is three months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Application for costs

2. An application for costs was made by Rev Dr AJ Brown against Bridgend County Borough Council. This application is the subject of a separate Decision.

Procedural Matter

3. I carried out an accompanied site visit on 4 June 2019. At my visit I was unable to gain access into one first floor room. The parties were in agreement that this was the appellants' son's bedroom and I have made my decision on this basis.

The appeal on ground (c)

4. An appeal on ground (c) is that there has not been a breach of planning control. The appellants contend that the use is permitted development as she is not letting out more than 50% of the total floorspace of the house and she no longer provides breakfast with guests being able to share all the facilities.
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5. It would appear from the evidence before me that the alleged bed and breakfast use falls under use Class C1 as defined in the Town and Country Planning (Use Classes Order) 1987 (as amended) (the Use Classes Order). The residential use of the property would fall under Class C3 of the Use Classes Order. The Town and Country Planning (General Permitted Development) Order 1995 (as amended) does not permit the change of use from C3 to C1 uses without planning permission. Therefore, under ground (c) it must be shown that the change of use is not material and planning permission would not, therefore, be required to authorise it. The onus of proof is on the appellant to show that there has not been a breach.
6. The appeal premises consists of a detached dwelling within an estate of dwellings. From the evidence before me it would appear that the appellant does not dispute that she lets out three bedrooms to paying guests. Whilst I note her contention that the master bedroom could be split into two rooms, thus resulting in the total number of bedrooms being used for guests being less than 50% of the total number of bedrooms, it was apparent at the time of my site visit that the property contained five bedrooms, one on the ground floor and four on the first floor.
7. I noted on my site visit that three rooms contained tea and coffee making facilities and towels were laid out on the beds. A TV was also provided in two of the rooms. Two rooms contained a double and single bed and the third contained a single bed.
8. The appellant has stated that breakfast is no longer made available to guests and that all guests can use the kitchen facilities and are treated as family guests. However, I noted on my site visit that there was a microwave, fridge, toaster and individually boxed cereals provided within the hallway separate from the main kitchen suggesting that breakfast is provided separately for guests.
9. Whilst the appellant states that the kitchen, bathroom and lounge may be shared by guests, facilities within the rooms and within the hallway indicate that guests have independence and do not live together as a household. Furthermore, the evidence before me shows that guests stay for short periods and pay for their stay which in my assessment represents a different character to that associated with a residential use.
10. Notwithstanding the appellant's view that the guest use of the property amounts to less than 50% of the dwelling's floorspace, I find that the use of three out of the five bedrooms for paying, short term guests would generate a significant amount of activity to and from the property. It would amount to a degree of use that is not of an ancillary scale or character to the use of the property as a dwelling.
11. In reaching this view I have taken into account the court judgements that I have been referred to¹. The judgements, which were based on the specific circumstances of the properties concerned, do not alter my conclusions that in the context of the particular case before me I find that the scale and degree of the use is such that a material change of use has occurred.
12. I have been provided with a considerable amount of information about the merits of the use, including its benefits to the local area and in respect of parking. However, such matters are not relevant to considerations relating to a ground (c) appeal and I have therefore given them no weight in reaching my decision.

¹ *Moore v SSCLG & Suffolk CDC, [2012] EWCA Civ 1202; Gravesham BC v SSE [1984], 47 P&CR 142*

13. The appellant has stated that the EN implies that she can have no paying guests. She contends that this contravenes discussions with the Council that have suggested that providing no more than 50% of the home is used by paying guests that no planning permission is required. I am required to consider the specific requirements of the EN before me and find that the current use of the property amounts to a material change of use. As such planning permission would be needed to authorise it. The cessation of the use would ensure that the breach and any harm to amenity were remedied. Any lesser steps to remedy the breach are not before me as no ground (f) appeal has been made.
14. I conclude that the use of the property as a mixed residential and bed and breakfast amounts to a material change of use for which planning permission is required. The appeal on ground (c) therefore fails.

Conclusion

15. I have taken into account all other matters raised including a letter of support but find none that alter the above findings. For the reasons given above I conclude that the appeal should not succeed and the enforcement notice is upheld.

Vicki Hirst

INSPECTOR

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 03/06/19

gan Richard Duggan BSc (Hons) DipTP
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 27.06.2019

Appeal Decision

Site visit made on 03/06/19

by Richard Duggan BSc (Hons) DipTP
MRTPI

an Inspector appointed by the Welsh Ministers

Date: 27.06.2019

Appeal Ref: APP/F6915/A/19/3225746

Site address: Whitehall Cottage, Pen-Y-Fai, Bridgend CF31 4NE

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 under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs Bater against the decision of Bridgend County Borough Council.
 - The application Ref P/18/907/RLX, dated 14 November 2018, was refused by notice dated 15 January 2019.
 - The application sought planning permission to: *Vary condition 2 of P/16/660/FUL to provide a solid screen to the east facing elevation only.*
 - The condition in dispute is No 2 which states that: *Prior to the beneficial use of the balcony/ roof terrace hereby approved, a 1.8m high solid and obscure screen shall be erected along both side elevations of the roof terrace (facing east and west). The screening shall be retained in perpetuity.*
 - The reason given for the condition is: *In the interests of residential amenity.*
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In November 2016 planning permission was granted for refurbishment works at the appeal property to include an extension with an elevated balcony/roof terrace allowing residents additional external amenity space (LPA Ref: P/16/660/FUL). The planning permission contained a condition (condition 2) which required a 1.8m high solid obscure screen to be erected on both side elevations (east and west) of the roof terrace. The appeal proposes to vary the wording of condition 2 to remove the requirement to erect a 1.8m obscure screen on the western elevation.

Main Issue

3. I consider the main issue to be the effect of varying the disputed condition on the living conditions of the occupiers of the neighbouring dwelling of Green Meadow, with particular regard to overlooking and loss of privacy
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Reasons

4. I saw on my site visit that the refurbishment works and the extension to the appeal property were largely completed, but the 1.8m obscure screens had not been erected. This allowed me to stand out on the roof terrace thus providing me with a view east and west over the neighbouring properties, including Green Meadow.
5. The Appellant states that a distance of 21.7 metres exists between the proposed roof terrace and the boundary with the neighbouring property of Green Meadow, and I note that a comparison is made with the minimum distances set out within the Council's Adopted Supplementary Planning Guidance (SPG) 02 – Householder Development, 2008. The Appellant specifically highlights Paragraph 4.6.3 which refers to overlooking and the privacy of neighbours, and states that; *Two-storey extensions to the rear of houses can affect privacy if first floor habitable room windows overlook the backs of adjacent properties. To reduce the loss of privacy it is recommended that the minimum distance from the new habitable room window to the boundary should be 10.5 metres, increasing to 12 metres if the window is to a first floor living room.*
6. However, Paragraph 4.6.5 of the SPG refers directly to balconies and states that; *While few rear gardens are entirely private some features can create a sense of unreasonable overlooking in neighbouring property. Balconies often cause the greatest difficulty, but sideways facing windows can also be undesirable. If a balcony is proposed it should be located or screened to prevent or minimise overlooking.*
7. Notwithstanding the distances between the properties, and that Whitehall Cottage may be lower in elevation, I saw for myself when standing within the garden of Green Meadow that the roof terrace is raised above the boundary wall and provides uninterrupted views into the main rear amenity space resulting in a high degree of perceived overlooking. The existing high level of privacy and amenity enjoyed by the occupiers would be significantly and harmfully diminished as a result of having no privacy screen on the western elevation facing Green Meadow. This would be exacerbated by the fact that prior to the refurbishment works and the erection of the extension the occupiers of Green Meadow have been able to use their private rear amenity space without any overlooking from neighbouring properties.
8. I therefore conclude that it is necessary to continue to impose the requirement to erect a 1.8m high solid and obscure screen on the western elevation of the roof terrace as set out in Condition No 2 of planning permission Ref: P/16/660/FUL. To allow the removal of this obscure screen would, on the evidence before me and from my own observations on the ground, result in harm to the living conditions of the occupants of Green Meadow. Therefore, the appeal proposal would conflict with Policy SP2 of the Adopted Bridgend Local Development Plan, 2013 which requires all development to contribute to creating high quality, attractive, sustainable places which enhance the community in which they are located, whilst having full regard to the natural, historic and built environment by ensuring that the viability and amenity of neighbouring uses and their users/occupiers will not be adversely affected by development proposals (criterion 12).
9. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of supporting safe, cohesive and resilient communities.

10. Having regard to the above and considered all other matters raised, I conclude that the appeal should be dismissed.

Richard Duggan

INSPECTOR



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 03/06/19

gan **Richard Duggan BSc (Hons) DipTP MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 02.07.2019

Appeal Decision

Site visit made on 03/06/19

by **Richard Duggan BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 02.07.2019

Appeal Ref: APP/F6915/A/19/3225665

Site address: The Haven, 21 Abergarw Meadow, Brynmenyn, Bridgend CF32 8YG

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 Shaun Middleton against the decision of Bridgend County Borough Council.
 - The application Ref P/18/547/FUL, dated 3 July 2018, was refused by notice dated 12 November 2018.
 - The development proposed is the regularisation of external finishes to dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the regularisation of external finishes to dwelling at The Haven, 21 Abergarw Meadow, Brynmenyn, Bridgend CF32 8YG in accordance with the terms of the application, Ref P/18/547/FUL, dated 3 July 2018 subject to the conditions set out in the annex to this decision.

Procedural Matters

2. Planning permission was granted in May 2016¹ for the construction of a detached 5-bedroom dwelling on plot 10. The Council subsequently agreed details² submitted to discharge a number of conditions, including Condition 2 which related to the materials to be used in the external surfaces of the dwelling. However, the dwelling has not been constructed in accordance with the approved details. Therefore, the planning application subject of this appeal was submitted to seek consent for the materials used on the external surfaces of the 'as built' and completed dwelling. This is confirmed by the Appellant's reference to condition 2 in the description set out on the application form and the absence of any other plans other than the elevation plan 15/AF/SM/06.
3. Therefore, it is clear from the evidence before me that the planning application did not seek to get permission to regularise the details of hard and soft landscaping or the

¹ Planning application reference: P/16/239/FUL

² Planning application reference: P/17/7/DOC

boundary treatment³ on the appeal site. As such, this appeal only deals with the materials used on the external surfaces of the dwelling.

4. Although Section E of the appeal form states that the description of the development has not changed from that stated on the application form, the Appellant has used the same description as that set out in the Council's decision notice. This description has been included in the banner heading above as I consider it to be a more precise and accurate description.

Main Issues

5. The main issues are the effect of the appeal property on the character and appearance of the area and on the living conditions of the future occupiers of Plots 6 and 7 through overlooking.

Reasons

6. The appeal property is a recently completed large detached dwelling located within a new residential development of 26 building plots. A number of other large detached houses have been completed around the development and are occupied, and a number of others are currently under construction. The development is located on higher ground above the village and I saw that it can be readily seen from surrounding viewpoints, including the nearby community route, Abergarw Trading Estate and the adjoining residential development at Dol yr Ysgol.
7. A Development Brief (DB) has been prepared by the Council which accompanied the outline planning permission for the site. It provides a list of guidelines under a number of headings, including 'Roof Coverings' and 'Materials Palette (Elevations)', to assist in raising the quality of the development and help with co-ordination and integration of individual schemes. I note that the DB was prepared at the same time as the outline application which was subject to a Section 106 Agreement and a condition requiring compliance with the DB. Nonetheless, no details have been provided by the Council as to whether the DB was subject to any public consultation or has been formally adopted by the Council.
8. I have treated the document as providing no more than guidance which can assist in the assessment of applications for dwellings and the discharge of conditions. I have had regard to the DB as I am satisfied that it does not introduce new policy, but rather provides a context upon which to determine planning applications and implement adopted development plan policy. There is no doubt that despite meriting some weight the DB represents guidance only, and I consider that the guidelines set out within the document should not be treated as prescriptive. Indeed, the Council correctly points out in its delegated report and appeal statement that the DB does not specifically limit the palette materials that should be used within the development.
9. Whilst the Council states that it has attempted to restrict the materials used within the houses on the development, I saw that there was a wide variety used within the completed dwellings on the site, including a mix of similar greyer coloured Bradstone, local limestone, natural stone, smooth render and a range of multi-face bricks including orange/red and buff brown. In this regard, I note that the Council has approved multi face red/brown buff bricks on the now completed plot 15 which lies to the west of the application site in a more prominent position on the estate road.

³ Conditions 4 and 6 attached to planning permission P/16/239/FUL

10. Having regard to the wide variety of materials approved in the overall development, I find that the materials used on the appeal property, including the stonework, roof tiles, the framework on the doors and windows as well as the fascias, soffits and bargeboard, are not visually obtrusive and have not led to a dwelling that appears out of character with the remainder of the development.
11. Although the Council has approved the increase in the height of the appeal property⁴ which authorised the raising of the roof from 9.25m to 10m, the Council remains concerned with the scale, size and extent of the changes, including the redesigned dormers and fenestration on the eastern elevation, the omission of a chimney stack and the insertion, enlargement and replacement of various windows throughout the property.
12. Whilst there are some design elements that are generally consistent within the properties across the site, such as the roof and dormer designs, I noted that there was a significant difference in the form, scale, layout, orientation and elevational design of the houses. The re-design of the dormer windows on the eastern elevation are similar to those already approved by the Council and are comparable to other that I saw around the development.
13. Overall, I consider that the as built appeal property does not have a detrimental impact on the character and appearance of the area. Therefore, it does not conflict with Policy SP2 of the Adopted Bridgend Local Development Plan, 2013 which requires all development to contribute to creating high quality, attractive, sustainable places which enhance the community in which they are located, whilst having full regard to the natural, historic and built environment by having a design of the highest quality possible, whilst respecting and enhancing local character and distinctiveness and landscape character (criterion 2); and being of an appropriate scale, size and prominence (criterion 3).
14. Whilst not forming part of the reason for refusal, the Council's delegated officer report and appeal statement refer to the potential for overlooking towards plots 6 and 7 from the new second floor window within the northern elevation of the appeal property.
15. I saw that the ground levels across the site vary significantly as it slopes down from north to south, resulting in the appeal property being sited at a lower level than plots 6 and 7 above. Due to the differences in land levels the second floor window will be at approximately the same height as the first floor windows of the dwellings on plots 6 and 7 to the north, with a separation distance of approximately 12 – 13 metres to the approved property on Plot 7. In order to prevent any potential overlooking I will impose a condition requiring the second floor window to be changed and fitted with non-opening window with obscure glazing. I regard this as being warranted to safeguard privacy, which would also be reasonable in terms of the effect on natural light and outlook for the second floor accommodation of the appeal property given the other clear glazed windows that serve that room.

Other matters

16. The Council has also raised concerns in its' appeal statement regarding the materials used within the outdoor space of the dwelling and particularly the treatment of the eastern boundary. However, as I have already set out above, this appeal only relates

⁴ Planning application reference: P/16/826/RLX

to the assessment of the materials used on the external surfaces of the dwelling and not the details of landscaping or boundary treatment.

Conditions

17. I have considered the suggested conditions and reasons put forward by the Council and, having had regard to the advice in Welsh Government Circular 016/2014: *The Use of Planning Conditions for Development Management* (October 2014).
18. In order to address any overlooking of Plot 6 and 7 the Council has put forward a condition requiring the second floor window on the northern elevation to be removed. However, I have imposed a condition requiring the window to be fitted with non-opening obscure glass as this would be an equally effective measure in protecting the privacy of the occupiers of Plots 6 and 7 and would address the concerns of the Council. The Council has put forward a condition requiring the removal of various materials and other aspects of the 'as built' dwelling and replacing them with materials that it has specified. However, given my conclusions above this is not necessary. The Council has also suggested conditions relating to car parking and removing permitted development rights. These do not meet the tests set out within circular 016/2014 as they are not relevant to the development permitted and are unnecessary within the context of this appeal.
19. The conditions and their associated reasons are set out in the annex below.

Conclusion

20. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of supporting safe, cohesive, resilient, healthier and equal communities.
21. Having regard to the above and considered all other matters raised, including the concerns of the Community Council, I conclude that the appeal should be allowed, subject to the conditions set out in the annex attached to this decision.

Richard Duggan

INSPECTOR

ANNEX TO APPEAL DECISION APP/F6915/A/19/3225665

- 1) The development shall be retained in accordance with the following approved plan: 15/AF/SM/06A received on 5 October 2018.

Reason: To ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with the application.

- 2) The second floor window on the northern elevation shall only be fitted with non-opening obscured glazing within 3 calendar months of this decision. The window shall be permanently retained in that condition thereafter.

Reason: In order to safeguard the privacy of neighbouring residents in accordance with Policy SP2 of the Adopted Bridgend Local Development Plan, 2013.