

APPEALS

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

APPEAL NO.	CAS-02534-G8P7S6 (1984)
APPLICATION NO.	P/22/698/FUL
APPELLANT	MRS S WILLIAMS
SUBJECT OF APPEAL	SINGLE STOREY SIDE EXTENSION: 79 WOODSTOCK GARDENS PENCOED
PROCEDURE	HOUSEHOLDER
DECISION LEVEL	DELEGATED OFFICER

The application was refused for the following reason:

1. The proposed development, by reason of its location, scale and form, represents an unacceptable design that would be detrimental to the character and appearance of the host dwellinghouse and the established building line of the wider street scene contrary to Policy SP2 of the Local Development Plan (2013), Supplementary Planning Guidance Note 02 Householder Development and advice contained within Planning Policy Wales (Edition 11, February 2021).

APPEAL NO.	CAS-02584-S0R7H6 (1988)
APPLICATION NO.	P/22/719/FUL
APPELLANT	MR C ABRAHAM
SUBJECT OF APPEAL	RETENTION OF DETACHED OUTBUILDING (USED AS A HOME OFFICE AND MEETING PLACE FOR EMPLOYEES): SANDBANKS, 32 THE GREEN AVENUE PORTHCAWL
PROCEDURE	HOUSEHOLDER
DECISION LEVEL	DELEGATED OFFICER

The application was refused for the following reason:

1. The proposal is to permanently retain a non-conforming commercial use in a predominantly residential area, which by reason of its scale and nature, would cause a significant source of nuisance and disturbance to the detriment of the amenities of neighbouring residential properties, contrary to Policies SP2 and ENV7 of the Bridgend Local Development Plan (2013) and advice contained within Planning Policy Wales (Edition 11, 2021).
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APPEAL NO.	CAS-02582-D3Q8D0 (1989)
APPLICATION NO.	ENF/175/22/ACK
APPELLANT	MR C ABRAHAM
SUBJECT OF APPEAL	ALLEGED UNAUTHORISED BUSINESS USE OF GARAGE: SANDBANKS, 32 THE GREEN AVENUE PORTHCAWL
PROCEDURE	WRITTEN REPRESENTATIONS
DECISION LEVEL	ENFORCEMENT NOTICE

The following appeal has been decided since my last report to Committee:

APPEAL NO.	CAS-02289-T3Y1C3 (1973)
APPLICATION NO.	P/21/968/OUT
APPELLANT	MR P EVANS
SUBJECT OF APPEAL	OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT FOR 15 DWELLINGS WITH APPROVAL FOR ACCESS: LAND ADJACENT TO TONDU ROAD NORTH OF PASCOES AVENUE BRIDGEND
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 joint appeal decision is attached as **APPENDIX A**

RECOMMENDATION

That the report of the Corporate Director Communities be noted.

JANINE NIGHTINGALE
CORPORATE DIRECTOR COMMUNITIES

Background Papers (see application reference number)



Appeal Decision

by Melissa Hall BA(Hons), BTP, MSc, MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 02/08/2023

Appeal reference: CAS-02289-T3Y1C3

Site address: Land North of 5 Pascoes Avenue and land adjacent to Tondu Road, Bridgend CF31 4JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr P Evans against the decision of Bridgend County Borough Council.
 - The application Ref P/21/968/OUT, dated 7 December 2021, was refused by notice dated 27 April 2022.
 - The development proposed is described as 'Outline planning application for residential development for 15 dwellings with approval for access'.
 - A site visit was made on 31 May 2023.
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Decision

1. The appeal is dismissed.

Procedural Matters and Background

2. The application was made in outline form with access to be agreed. All other matters are reserved for subsequent consideration. I have therefore treated the submitted site layout plan together with the site sections and elevations drawing as indicative.
3. Despite an indication on the appeal form, the appellant's submissions include no specific or substantiated case to support an application for costs. I do not, therefore, consider such an application to have been made.
4. The scale parameters stated in the application with regard to the height of the proposed buildings is between 8.5 and 9.5 metres. In his appeal submissions, the appellant has stated that he would be willing to amend the eaves height to 7.2 metres to bring it in line with the eaves height of the development permitted at the adjacent Woodland Boarding and Training Kennels. However, this would be altering the substance of the appeal application and, therefore, contrary to Article 26C(3)(b) of The Town and Country Planning (Development Management Procedure) (Wales) Order 2012. I must determine the appeal on the basis on which the Council considered the application.
5. There is a detailed planning history associated with this site. An outline application for up to 24 dwellings was dismissed at appeal in 2019 on the grounds of the effect on the character and appearance of the area and highway safety together with the impact on trees and features of importance for local ecology. (Ref APP/F6915/A/19/3237153). A later proposal for up to 9 dwellings was also dismissed on appeal for similar reasons (Ref APP/F6915/A/20/3249034). An appeal against a refusal to fell 33 trees protected by a

Tree Preservation Order (TPO) and the planting of replacement trees along the southern, western and northern site boundaries was dismissed in February 2022 insofar as it related to 29no. trees but allowed insofar as it related to 4no. trees (Appeal ref CAS-01379-M4T9Y9).

Main Issues

6. Against this background, the main issues are:

- The effect of the proposed development on the character and appearance of the area;
- The effect of the proposed development on the living conditions of future occupants;
- Whether the development would result in the unacceptable loss of trees and features of importance for local ecology; and
- The effect of the proposed development upon highway and pedestrian safety.

Character and appearance

7. The appeal site is a linear parcel of land located on the south-western side of the A4063 Tondu Road. It has a relatively steep gradient and comprises a largely wooded area incorporating a number of mature trees.
8. Although the appellant incorrectly states that the site is 'allocated' for development, it nonetheless lies within the Primary Key Settlement of Bridgend, as defined by the adopted Bridgend Local Development Plan (LDP) 2013. The Council does not, therefore, take issue with the principle of development.
9. The appellant states that the scale parameters have been amended to a minimum and maximum height of 8.5 metres and 9.5 metres respectively, in order to address the 2020 Inspector's concerns that the 9.5 – 10.5 metre height in views from the road would be '*... more prominent and of a scale that would conflict with the local context*'. The appellant also states that the development would be split into two blocks in order to provide a satisfactory form of development that would not be as prominent and would be of a scale more appropriate to the local context.
10. Nonetheless, I consider that two separate blocks of the height specified, combined with their proposed width and depth, would read as bulky and monolithic. The indicative elevations submitted do little to allay my concerns. Although I accept that there would be a centrally located gap in the site frontage, I do not consider that it provides sufficient visual relief for two separate blocks of the scale proposed. Rather, the built form would occupy much of the site frontage in what is otherwise a predominantly verdant, wooded setting.
11. Furthermore, I observed that the surrounding area is, for the most part, characterised by two storey dwellings with the exception of the three storey apartment block at the entrance to Millfield which is set at a lower ground level than the application site. Although there are also a number of commercial buildings of a larger scale opposite the site, they are set back from the A4063, utilitarian in character and appearance and likely to be very different to the residential development proposed here. Hence, the proposed development would be at odds with the more modest dwellings in the surrounding built form to which they would most closely relate. I therefore remain of the opinion that the proposed development, albeit amended from that the subject of the previous applications, would represent a prominent form of development that would fail to have proper regard to the local context.

12. I note the appellant's assertion that three levels of accommodation is widely acceptable in residential developments such as this and that rooms in the roofspace are commonplace, not least to make best use of land. I do not dispute that Planning Policy Wales (PPW) supports innovative design, albeit it also requires new development to respond to local context. In particular, at paragraph 3.9 it states that "*the special characteristics of an area should be central to the design of a development. The layout, form, scale and visual appearance of a proposed development and its relationship to its surroundings are important planning considerations*". For the reasons I have given, I do not consider that the proposal would be consistent with the placemaking aims of PPW.
13. I therefore find that the development would cause harm to the character and appearance of the area and conflict with the aims of Policy SP2 of the adopted LDP which, *inter alia*, states that development should contribute to creating high quality, attractive and sustainable places. It would also be at odds with the advice in Planning Policy Wales in this regard.

Living Conditions

14. The Council also takes issue with the layout shown on the Indicative Site Layout Plan insofar as it considers that the tapering nature of the site towards its southern end would result in the provision of a limited amount of private amenity space, which would be further compromised by the topography of the land on the western side (i.e. to the rear) of the proposed dwellings. Conversely, the appellant states that the Council has not indicated what it considers would be '*... generally accepted standards of space*' and that some 760m² of communal amenity space would be provided within the application site in total. Whilst the appellant is critical of the Council's position, he goes on to suggest that '*approximately 50sq.m of space per unit generally exceeds acceptable standards of space*' without qualifying the basis on which this conclusion has been reached.
15. To my mind, access to outdoor space for purposes such as sitting out, hanging washing or storing refuse is a basic requirement that would need to be of a sufficient size and quality to cater for the day-to-day needs of the future occupants of the dwellings. Whilst I agree that a degree of flexibility may be applied to the actual amount of space provided, it would also depend upon quality as to whether it is likely to have a reasonable amount of use in practical terms. Be that as it may, the indicative layout does not show the configuration of the dwellings in each block nor the amount of amenity space that could be provided to serve each dwelling. Hence, I am not satisfied from the limited details before me that there would be sufficient space of a reasonable quality provided for each dwelling that would meet the day-to-day needs of the future occupants. It would thus conflict with PPW, which makes clear that good design is fundamental to creating sustainable places where people want to live, work and socialise and includes consideration of the design of a development and its impacts upon everyday lives.

Trees & Ecology

16. The Council's SINC Review plan shows the appeal site lying within the boundaries of the Cefn Glas Wood (Graig-y-Casnewydd) Site of Importance for Nature Conservation (SINC). The SINC is designated for its semi-natural woodland with an assemblage of indicator species and containing disused quarries with shaded rock exposures and scrub. It also forms part of a Restored Ancient Woodland Site (RAWS) and is covered by Tree Preservation Order (No 3) 1954 (TPO), specified as Woodland W20.
17. Whilst the appellant disputes the inclusion of the appeal site, this appeal is not concerned with the designation or otherwise of the area of land included in the SINC. It is clear from the SINC Review plan that the appeal site lies within its boundaries. Further, there is no substantive evidence before me that its characteristics, including the appeal site, have

changed since designation. I have therefore had regard to the effect of the proposal on the SINC, in addition to the RAWs and the TPO in coming to my decision.

18. The appellant asserts that there are a significant number of trees in poor condition on the site, many of which are dead, dying and diseased. Whilst it is claimed that permission was given for the felling of a number of TPO'd trees under appeal ref: CAS-01379-M4T9Y9, it is my understanding that the appeal was allowed only insofar as it related to the felling of 4 trees with the Inspector finding that the tree survey produced at the time did not identify a danger or that there were significant health and safety issues.
19. The appellant's Tree Survey in support of this appeal identifies 16no. trees as Category U and recommends they be removed. The associated Tree Constraints Plan shows that these trees are mainly located close to the site's boundaries with the largest group of trees to be removed located in the northern part of the site. A further Arboricultural Assessment identifies 11no. trees, mainly along the site frontage, as presenting features which increase their likelihood of failure. The Assessment clarifies that remedial works for the aforementioned trees are necessary in order to safeguard users of the A4063 and that such works are specified only in relation to trees which are dead, dying and dangerous.
20. Even with the removal of a number of trees on account of their condition, I consider those that would remain would contribute to the green backdrop to the urban form that forms part of a wider dense, planted belt alongside the A4063 and is highly visible from a number of public vantage points. They provide a verdant setting to this part of the urban area and contribute positively to the wider locality, playing a significant part in softening public views of the built environment. In any event, the removal of a number of the trees does not, of itself, justify allowing additional built form that would further alter and negatively impact on the character and appearance of the area.
21. Furthermore, whilst the appeal site forms only part of the SINC, I agree with the Council that it is nonetheless an integral part of a wider woodland which contributes a significant green feature to the north of Bridgend town centre and provides a green buffer to the Cefn Glas and Bryntirion residential areas.
22. Natural Resources Wales' (NRW) pre-application correspondence confirms the broadleaved woodland on site comprises habitat suitable for dormice and that the presence of this species should be assumed. This adds weight to the Council's contention that the area is likely to provide good foraging and potential roosting opportunities for protected and notable species such as bats and dormouse together with a valuable habitat for birds and invertebrates.
23. I have taken into account the Preliminary Ecological Appraisal, dated January 2020, prepared to inform the previous outline application for 9no. dwellings. This was accompanied by an Ecological Construction Method Statement, dated June 2021, which has been updated to reflect the appeal proposal and is intended to provide an addendum to the Preliminary Ecological Appraisal.
24. However, I am mindful of the Inspector's observations in the previous appeal that whilst no protected species or other notable habitats were recorded at the time of the survey, it was undertaken in January 2020 and outside the optimum period for undertaking survey work. However, the appraisal recognised that the site had '*... the potential to support protected/notable species including a breeding bird and bat assemblage, dormouse, badger and common reptiles*' and went on to recommend a number of mitigating measures and that further survey work should be undertaken. In addition, NRW's pre-application correspondence stated that a dormouse survey should be undertaken and the survey results submitted in support of any planning application.

25. Whilst the appellant claims the Ecological Construction Method Statement provides an addendum to the original ecological appraisal, I cannot be certain of the nature or extent of any additional survey work undertaken. Consequently, I have little confidence in the conclusion that *'Pursuant to the site visit by BE Ecological Ltd dated June 2021, no further additional species were encountered other than those identified in the EDP Limited preliminary ecological assessment dated January 2020'*. It therefore follows that I know not of the extent to which the presence or otherwise of protected species, and the ability of on-site habitat to support such species, has been reassessed.
26. Technical Advice Note 5: Nature Conservation and Planning (TAN 5) advises that planning permission should not be granted without the determining authority having satisfied itself that the proposed development either would not impact adversely on any protected species on the site or that, in its opinion, all three conditions for the eventual grant of a licence are likely to be satisfied. Given the absence of survey work in relation to dormice, I cannot conclude that the proposal would not have an adverse impact on a protected species. It is also difficult to understand how the measures outlined in paragraph 4.6 of the Ecological Appraisal in terms of compensatory planting, creation of glades, wildlife meadows, etc. could be accommodated within this site given the nature and scale of the proposed development.
27. Both these reports appear to argue that because the site is relatively small then the loss of the woodland habitats and the potential impact on protected species, would not be significant. However, the site is within a SINC and is an area of RAWs subject to a TPO. LDP Policies ENV4 and ENV6 presume against development that would adversely affect designated sites. This accords with guidance in Planning Policy Wales and TAN 5 Nature Conservation.
28. I find that the proposal would result in the loss of trees and habitats that are important features of the SINC, and I cannot conclude on the basis of the submitted evidence that the proposal would not have an adverse impact on a protected species. The proposed development would therefore adversely affect the character and appearance of the area and biodiversity characteristics of the site, contrary to the provisions of Policies ENV4, ENV5 and ENV6 of the Local Development Plan (2013) and guidance contained within Supplementary Planning Guidance 19 (Biodiversity and Development), and conflict with the relevant provisions of Planning Policy Wales and TAN 5.
29. The appellant draws my attention to other development permitted in the vicinity of the SINC, suggesting that its integrity has been compromised as a result. I do not know the full details of the cases referred to, albeit the Council states that the various developments along Tondu Road are, in the main, historically established dwellings which have been modernised. With regard to the Woodland Boarding and Training Kennels, I understand from the Council that the footprint of the existing dwellinghouse remained the same and the extension of the dwelling to form a second storey was considered not to affect the SINC. This site also lies outside the restored ancient woodland designation and an initial bat scoping survey was submitted. Consequently, I consider that there are clear differences between the examples cited and the proposal before me. In any event, each proposal must be considered on its individual merits.

Highway safety

30. Unlike the previous applications and appeals, approval of access is sought as part of the outline application. Access is proposed from the A4063, which is subject to a speed limit of 50 mph. The appellant's claim that the speed limit is 30mph at the site frontage is not borne out by my observations. Nor is it for me to determine whether by displaying 50 mph speed limit signs the Council is in breach of its powers. At my site visit, the traffic

appeared to be travelling at or around this speed limit, as was also witnessed by the previous Inspectors on their respective site visits.

31. I understand that the Council has a general presumption against the introduction of additional access points to principal inter-urban roads due to the creation of significant hazards to the detriment of the safety and free flow of traffic. In this particular case, the Council advises that vision splays appropriate to the 50mph speed limit would need to be provided with suitable control over these areas being demonstrated.
32. The appellant's Access Appraisal and Transport Statement, together with the drawings submitted in support of the proposal, show that visibility splays appropriate to the existing speed limit along the site frontage can be delivered with minor modifications to the road alignment.
33. The Council considers that a southerly vision splay of appropriate dimension could be accommodated within highway limits, provided that it is measures to hatch markings and not the physical edge of carriageway. However, given its concerns in respect of vehicles straddling and driving through hatched markings, it contends that there is a need to include kerbed buildout which should form part of the submitted proposal in order to accept the vision splay as drawn.
34. The appellant has submitted the results of a traffic survey carried out on 1 October 2022. The survey shows the average speeds along the A4063 were 42.9mph northbound and 37.2mph southbound and there were 8 U-turns on the southern arm throughout the day. Nevertheless, I share the Council's concerns that no information has been provided of the actual location of the speed survey or the full survey results. Also, it would appear that the data was collected for only one day. Consequently, I consider that this limited data cannot be relied on as an accurate picture of typical traffic volume, speed and manoeuvres. I therefore see no reason to find the Council's requirement for details showing the full extent of the scheme to be unreasonable.
35. The proposed corner radii to the proposed access are designed to replicate the design of other access points along the A4063. However, the Council argues, and I agree, that the design of a new access should follow current design guidance and standards rather than replicating existing accesses which, *inter alia*, may have been designed to superseded highway standards.
36. The Council is further concerned that because the proposed access would be onto a dual carriageway the proposal would lead to hazardous U-turn manoeuvres by drivers approaching and leaving the site. Given the distance that southbound and northbound traffic would have to travel to turn around on entering or leaving the site, I consider that the Council has made a reasonable assumption that U-turn movements would arise.
37. Indeed, the appellant's Transport Statement recognises that the proposed development would result in an increase in U-turn movements at a junction north of the proposed site access, albeit argues that such manoeuvres are allowed and currently occur at this junction. It therefore concludes that the development would not result in any adverse impact in terms of the free flow of traffic and road safety. That being said, the appellant expresses a willingness to contribute towards a Traffic Regulation Order and associated signage to prevent the U-turning of vehicles.
38. In my opinion, and irrespective of whether a limited number of such manoeuvres may be already occurring, the development has the potential to give rise to a significant increase in the number and frequency of U-turns due to the existing highway conditions that have already been described. Whilst the appellant proposes mitigation in the way of a contribution towards a Traffic Regulation Order and associated signage to prevent the U-turning of vehicles, no such details are before me. Thus, I am not convinced that the

highway safety concerns associated with this aspect of the proposed development could be overcome.

39. Based on the foregoing, I conclude that the proposed development fails to demonstrate that a satisfactory means of access to serve the traffic generated can be achieved and it is likely to generate vehicular U-turn movements to or from the public highway thereby creating further traffic hazards to the detriment of highway safety along the adjoining A4063. It would therefore conflict with the requirements of Policies SP2, SP3 and PLA5 of the Bridgend Local Development Plan and national planning policy advice in PPW.
40. The site is currently not directly served by pedestrian footways, the nearest footway being some 65 metres to the south of the application site, adjacent to the junction of Mill Lane with the A4063. The proposal includes a pedestrian footway on the western side of the A4063. The Council considers the proposed scheme to be inadequate as it is not fully detailed in terms of crossing details and drainage and its width does not provide for a margin of at least 500mm as dictated by DE101 – Footway within Appendix G of the Active Travel Design Guidance, dated July 2021, which is necessary alongside a road with a speed limit of 40mph or above. Additionally, it is not supported by a safety audit.
41. Even if appropriately designed pedestrian footway links could be achieved, the proposal does not incorporate any cycle friendly infrastructure to link with existing facilities in the area. In order to access the existing route, any residents/visitors wishing to cycle to or from the site would need to cross the A4063. There is no crossing facility within the vicinity of the site and therefore it is not considered possible to access the site safely by bicycle.
42. To my mind such an arrangement in relation to a new residential development is not consistent with the spirit of PPW which states at paragraphs 4.1.31-4.1.34 that Active Travel must be supported by “*ensuring new development is fully accessible by walking and cycling*” and “*in accordance with the sustainable transport hierarchy, start with identifying the shortest, most attractive walking and cycling connections, then addressing the other transport needs*”.
43. I acknowledge that there are bus stops in reasonably close proximity to the site; one adjacent to the junction of Mill Lane with Tondu Road and the other on the southbound carriageway of Tondu Road adjacent to its junction with Lewis Avenue. However, in the absence of proposals for footways and safe crossing points to enable pedestrians and cyclists to negotiate a dual carriageway, I consider that the proposal would be detrimental to highway and pedestrian safety.
44. In light of the above, I am of the opinion that the site’s location is such that that is not fully accessible by a range of different transport modes and will rely on the use of the private motor vehicle. As such, it would not minimise the need to travel by reliance on the car or maximise opportunities for people to make sustainable and healthy travel choices for their daily journeys, and it would not accord with the aims of PPW in this regard.

Other Matters

45. I acknowledge the contribution the proposed development would make to meeting the housing supply shortage in Bridgend and the other economic and social benefits such as the provision of affordable housing in accordance with the LDP. I also accept that the development may have some sustainability credentials. However, these matters do not outweigh the considerable harms that I identify above.
46. I note that, despite the Council’s delegated report outlining the need for planning obligations relating to affordable housing, education provision, outdoor recreation and highway infrastructure, no legal agreement or unilateral undertaking has been submitted

to discharge such obligations. I have also not seen anything to indicate that such obligations are not necessary. Rather, the appellant has indicated that he would consider entering into a section 106 obligation upon the grant of outline planning permission. It is not for me to invite the submission of a Section 106 agreement and without one, there is no mechanism before me to secure the measure or contributions necessary to make the proposal acceptable with regard to these matters.

Conclusion

47. For the reasons given above and having regard to all matters raised, I conclude that the appeal should be dismissed.
48. 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 to make our cities, towns and villages even better places in which to live and work.

Melissa Hall

INSPECTOR