

## Appeals

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

<b>APPEAL NO.</b>	<b>CAS-02312-F4Q3P4 (1975)</b>
<b>APPLICATION NO.</b>	P/22/309/FUL
<b>APPELLANT</b>	MR & MRS JONES
<b>SUBJECT OF APPEAL</b>	DEMOLISH EXISTING BUNGALOW AND CONSTRUCT 10 NEW APARTMENTS WITH ASSOCIATED PARKING AND AMENITIES: 2 LOCKS COMMON ROAD, PORTHCAWL
<b>PROCEDURE</b>	WRITTEN REPRESENTATIONS
<b>DECISION LEVEL</b>	DELEGATED OFFICER
<b>DECISION</b>	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**

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### **RECOMMENDATION**

That the report of the Corporate Director Communities be noted.

**JANINE NIGHTINGALE**  
**CORPORATE DIRECTOR COMMUNITIES**

**Background Papers** (see application reference number)



## Appeal Decision

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by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 12/09/2023

Appeal reference: CAS-02312-F4Q3P4

Site address: 2 Locks Common Road, Porthcawl CF36 3HU

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- 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 and Mrs Jones against the decision of Bridgend County Borough Council.
  - The application Ref P/22/309/FUL, dated 3 May 2022, was refused by notice dated 1 December 2022.
  - The development proposed is the demolition of an existing bungalow and the construction of 10 new apartments with associated parking and amenities.
  - A site visit was made on 4 July 2023.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. This appeal was initially made as one against non-determination. However, Section 78A of the Act as amended introduced a 4-week period of “dual jurisdiction” between the local planning authority (LPA) and Planning and Environment Decisions Wales where an appeal has been lodged for non-determination.
3. This allows an LPA to continue to determine an application for planning permission during the first 4 weeks of an appeal being made against non-determination. The LPA provided a decision notice within the four-week period. Accordingly, I have determined this appeal as one against planning refusal of planning permission, rather than non-determination as required by S78A of the Act as amended.
4. The LPA has added to its statement by including issues which were not in its reasons for refusal. These are concerns on accessibility of the site to public transport modes and concern about the proposed access width of the development. The appellant has commented on these points in its 9-week response submission. I have taken these matters into consideration despite being introduced at the statement of case stage of the appeal.

## **Planning Policy**

5. The appeal is determined in accordance with the Bridgend Local Development Plan 2006-2021 (LDP) having regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004. Future Wales, The National Plan 2040 (FW) forms part of the development plan for the purposes of Section 38(6).
6. Planning Policy Wales Edition 11 (PPW) and FW deal with national sustainable placemaking outcomes, the plan-led approach to the delivery of sustainable places principles and the process of improving the economic, social, environmental, and cultural well-being in accordance with the sustainable development principle. I have also had regard to Technical Advice Note 12 Design (TAN 12). I have also been referred to and I have had regard to Building Better Places.

## **Main Issues**

7. The main issues are:
  - the effect of the proposal on the character and appearance of the area, and
  - whether the proposed development is accessible by means of active travel to public transport, and
  - the effect of the proposal on highway safety, and
  - the effect of the proposal on the living conditions of occupiers of the development in relation to the adequacy of the outdoor amenity space provided, and
  - the effect of the proposal on the living conditions of occupiers of neighbouring dwellings in relation to outlook.

## **Reasons**

### *Character and appearance*

8. The appeal site is located on Locks Common Road between Nos.1 and 3 overlooking Common Land and the sea front. Locks Common Road joins Severn Road to the south-east at one end, and Mallard Way on the northern end. The appeal site has been cleared of the former single-storey bungalow and associated buildings and is bounded by boundary walls with vehicular access onto Locks Common Road. No.1 Monkstone House borders the site to the south-east and is a substantial building currently utilised as a residential home. No. 3 borders the appeal site to the north-west and is one half of a semi-detached property. To the rear of the appeal site is Hutchwns Close which include three contemporary designed houses bordering the appeal site to the north-east and are positioned at a higher level than the current level of the appeal site.
9. The proposal would be to erect a 10-unit residential block some three-storeys in height accommodating units in the roof space. Each unit would be provided a balcony area and patio area for those units on the ground floor. There would be four apartments on the ground floor comprising two bedrooms, study and living accommodation. Four apartments on the first floor providing similar accommodation and two larger apartments on the second floor comprising three bedrooms, study, and living accommodation. Twenty-two parking spaces and six covered cycle spaces would be provided to the rear of the site with access and drive to the south-east of the building.
10. Excluding the side driveway and a narrow space bordering No. 3, the proposed building would occupy the remaining width of the appeal site. The proposed building is tapered inwards in layout from the boundary of No.1 to the boundary of No. 3. The proposed roof

design is a combination of pitched dormer roofs and hipped roofs combining to a mansard roof where a concealed flat roof accommodates solar panels.

11. The Council expresses concern about the design, scale, and siting of the building with reference to the front oversized dormers, and the vertical projecting features of the front façade being excessive, all of which fails to harmonise with the character and appearance of the immediate site context of surrounding buildings. The Council notes that the appeal site is in a prominent location and is highly visible.
12. The appellant has provided a Design and Access Statement (DAS), Pre-Application Consultation Report (PACR) and a detailed response to the reasons for refusal in the statement of case. The DAS notes that pre-application advice had been obtained for two detached dwellings on the site and that this scheme was considered broadly acceptable in principle by the LPA.
13. The appeal site is an infill plot between existing buildings in the settlement. It has visual prominence because the street is the last row of built form before the Common and the seafront. Properties facing the Common are viewed from a wide area along the footpath adjacent to Mallard Way and by several receptors which forms an active travel route along the seashore and Common. The layout of buildings in broad terms form a string of properties facing the Common and the seafront. The properties south-east of Severn Road leading to the private road which connects to Mallard Way and the start of West Drive, and the properties on Locks Common Road leading to the three apartment blocks on the northern end form this string. These properties are within the visual envelope of the site.
14. There is considerable variety to these properties. Some are gable-fronted, but the majority have a considerable roof-span from ridge to eaves. Another feature are relatively small and subservient roof dormers in the roof slopes. The palette of materials is generally light-coloured renders and red tile roofs, although there are exceptions where grey roof slate has been used. Curved bay windows are a feature on adjoining buildings to the appeal site. The buildings either side has first floor balconies. Balconies are a common feature of the three-block apartment on the northern end of Locks Common Road. This more recent development has been developed into three detached blocks. The roof design is a shallow rise, but bays have been incorporated into the design and the top floors have been recessed back from the front wall of these buildings.
15. Monkstone House the adjacent building to the appeal site has two lift towers at both ends of the building. The proposed development has taken this design feature to replicate in the design. However, these finish at eaves level, and would be seen in recessive form due to the layout of the building. However, I do consider that the proposed development has a strong horizontal emphasis due to these protruding two-storey angular bays with balconies on top that are uniformly set-out and equally spaced. This regular rhythm of features highlights the horizontal appearance of the building.
16. Similarly, the wide and large dormer or gable glazed features in-between the two-storey angular bays emphasise the horizontal extent of the proposed building. These are evenly spaced and are not recessive in the roof slope. As with most buildings in the vicinity in the visual envelope of the site as described above, roof dormers and features incorporated in the roof slopes are generally small and subservient features and are recessive. This character feature has not been included in the proposed design. The vertical rhythm of the building has been disrupted by the chosen design because as in several features of adjoining properties and in relation to the contemporary blocks to the north of the site the top-floor has a recessive step and the dormers in more traditional buildings near to the site are small and subservient. The outcome of the proposed design is a strong horizontal

emphasis which does not have due regard to the contextual qualities of the surrounding area.

17. I note that the appellant has given several examples of modern and contemporary infill developments in the wider area of Porthcawl. These are noted, but the visual envelope of the site and where the proposal would be viewed, assessed, and appreciated by receptors is framed by the street scene, I have described above.
18. In addition, I have a concern about the shallow roof rise of the proposed development. Roofs that are deep and prominent are a feature of the area, but I also acknowledge that this may not be practical for an apartment block. However, the horizontal massing has been addressed in the three apartment blocks to the north because these are separated out, but also in part respond to the layout of that site. However, coated composite roof sheets in dark red, whilst responding to the colour palette of the area, would appear at odds with the predominant feature of red roof tiles. Whilst this could be conditioned, the chosen roof design may not be compatible with tiles because of weight loading.
19. LDP Policy SP2 requires that all development should contribute to creating high quality, attractive, sustainable places which enhance the community having regard to the natural, historic, and built environment. The policy requires that the design of development respects and enhances local character and distinctiveness. I consider the proposal fails to respect local character and distinctiveness, which is evident in this case.
20. I acknowledge the appellant's assessment on size, scale, density, overdevelopment, and orientation, but I have viewed the site and surrounding area and I have considered that the three-dimensional articulation of the proposed building does not respond well to its context. TAN 12 indicates that a contextual approach should not necessarily prohibit contemporary design. I consider that the proposed design for the reasons I have set out above is inappropriate in its context which should not be accepted. Good design forms part of the themes that collectively contribute to placemaking and making better places. PPW recognises that design is not just about the architecture of a building but the relationship between all elements of the natural and built environment and go beyond aesthetics and include social, economic, environmental, cultural aspects of the development. Whilst many aspects of the objectives of good design have been met, others have not, which have been identified in this decision.
21. The proposal conflicts with LDP Policy SP2 criterion 2, PPW paragraph 3.14 and TAN 12 paragraphs 2.6, 4.3 - 4.9.
22. I conclude that the proposal would harm the character and appearance of the area.

#### *Accessibility*

23. This issue has been raised by the LPA but was not a reason for refusal. The proposal includes a new 2 m wide footpath along the site frontage and Monkstone House. Junction improvements are provided at Locks Common Road and Severn Road. A new pavement would be provided along Severn Road linking to Mallard Way and a new crossing connection is intended to link into the footpath/cycleway adjacent to Mallard Way. These could be offered to the Council for adoption to upgrade part of Locks Common Road from a private road. The LPA has discounted these improvements and has effectively assessed the proposal as if these were not part of the proposal.
24. In my view, they are, because they are within the red line application site and the appellant has declared that all necessary notices have been served and therefore, they must be considered. The LPA casts doubts that agreements have been reached and question the deliverability of the scheme. In any proposal that may include works outside the site (although within the application site as presented) would be subject to conditions

preventing any development from taking place until a scheme has been agreed in writing with the LPA and implemented in accordance with an agreed timetable. The LPA would have control, could refuse to accept the scheme and ultimately the condition could be enforced. There is no compelling evidence to indicate that there is no real prospect of reaching agreement, that the works are not deliverable and go beyond the lifetime of any planning permission. I conclude that the highway improvements form part of the proposal and are considered. The improvements link into the transport and pedestrian network and count as a significant benefit promoting active travel. It is not a matter for me whether the highway improvements would be adopted as this is a separate consent regime. However, the fact the provision is being made and there is no real criticism of the details must indicate that they are acceptable.

25. The LPA indicate that the site is not accessible being over 600 m from public transport, 443 m from Penylan Avenue which is a private service that runs hourly and up to 13:00 hrs. It has used The Guide for Planning for Public Transport in Developments 2018 where the preferred distance to a bus stop should be within 300 m. The appellant disputes this and points out that for commuting the distance can be up to 500 m. The appellant refers to the Active Travel Act Wales Guidance July 2021 where a walking distance of up to 2 miles is cited. Having walked from the site to Penylan Avenue it was well within a 10-minute walking range and within 800 m as indicated most conducive to walking as set out in Manual for Streets 2007 paragraph 4.4. This is considered having regard to the quality of the experience, the distance and the proposed provision that would be put into place to facilitate this through the scheme of highway/pedestrian improvements.
26. It should be noted that the site is in a sustainable location, it is within the settlement and is previously developed land, in a predominantly residential area and is infill development. Developments have been accepted on the north side of Locks Common Road and the principle of development has seemingly been accepted for residential development on the site. I do not consider that the proposal is heavily reliant on the private car and the provision of car parking spaces within the site can also limit this demand and future occupants of the site will be aware of these limitations. The proposal complies with LDP Policies COM3, SP2 criterion 6, and SP3.
27. I conclude that the proposed development is accessible by means of active travel to public transport.

#### *Highway safety*

28. The concern on highway safety is parking provision and the upgrading of a private road which should only serve up to five dwellings. The LPA refer to the All-Wales Design Guide. The LPA's refusal is based on the Council's policy not to accept more than 5 or 6 dwellings to be accessed off an unadopted road. This approach ignores the proposal to improve the highway infrastructure. The approach is not based in planning policy and the determination of the appeal in accordance with the development plan. I can find no reference to the 5 or 6 dwelling thresholds in LDP Policies SP2 and SP3. The Council policy must be guidance on the adoption process and does not outweigh planning policy contained in the development plan. I am therefore satisfied there is no planning basis for the LPA's approach in this instance.
29. Much emphasis is placed on the issue of car ownership and that 21% of households in the area own three cars or more. This does not imply that future occupants of the development would follow suit as they will be aware of the constraints of the development should they acquire an apartment. Neither does it indicate that the parking provision should be increased from the 22 spaces provided. I accept that this is in line with the Supplementary Planning Guidance (SPG) 17 Parking Standards. The maximum standard

for the development is 24 car parking spaces and the SPG notes that minimum parking standards should not be applied as is set out in PPW and Planning Policy Wales Technical Advice Note 18: Transport 2007 (TAN 18), (paragraph 4.6), including consideration of the relative locations of land uses and their consequent accessibility.

30. Concern has been expressed over the lack provision for delivery drivers and separate access to the building and that the study rooms should be considered in the parking demand of the site. The pattern of work has changed and many work from home which also reduces trip generation. Any deficiency in the parking demand is not significant in this case when considering the context of the site and accessibility. I conclude that the car park and cycle parking provision are acceptable.
31. The LPA has raised the issue of the access width which is reduced to slow down moving vehicles and to provide pedestrian visibility. The appellant notes that access will be controlled by security gates and the access is wide enough to meet the requirements of Building Regulations for Fire engine access. Another matter is the concern that Locks Common Road could be closed-off at any time to the north thereby resulting in a cul-de-sac arrangement. I do not consider that this would affect the development proposal's access when the highway improvements are considered.
32. The LPA has not identified matters to lead me to conclude that the proposal would harm highway safety. The highway improvements would reduce the parking provision on Severn Road and the appellant is willing to include the provision of traffic orders within the scheme of works to be agreed with the LPA.
33. The proposal does not conflict with LDP Policies SP2 and SP3 and SPG 17.
34. I conclude that the proposal would not harm highway safety.

*Living conditions of occupiers of the development in relation to the adequacy of the outdoor amenity space provided*

35. The proposal provides balconies or patio area which range from 15 m<sup>2</sup> to 21 m<sup>2</sup> for the two bedroomed apartments, and 34 m<sup>2</sup> for the three bedroomed apartments. There is a shared communal green space in front of the building although this would not be private amenity space.
36. The LPA has used SPG 2 Household Development to assess this aspect of the development. However, paragraph 1.1 indicates that it is a guide about the design of extensions and alterations to dwellings. The LPA refers to paragraph 5.1.1 under Residential Amenity and to the point that adequate amenity space should be left over following an extension to the dwelling. I cannot see the relevance of this document to the proposed development. The officer's report dated 3 May 2022 recognises that there is no adopted policy prescribing minimum outdoor space standards. The absence of a specified standard does not set any threshold to gauge that below an amount of useable amenity space the provision is unacceptable and would harm future occupants' living conditions.
37. I do not consider that the amount of outdoor amenity space provided by the development is so small to diminish future occupants' living conditions. There are mitigating factors since there are suitable active travel connections provided to nearby outdoor recreation which is in a location that is attractive and generally beneficial to the well-being of its residents. It is also a factor that future occupants of the development have a choice whether this amount of amenity space is appropriate to their individual needs.
38. I therefore consider that the LPA has not demonstrated harm and the proposal would not conflict with LDP Policy SP2.

39. I conclude that the proposal would not harm the living conditions of occupiers of the development in relation to the adequacy of the outdoor amenity space provided.

*Living conditions of occupiers of neighbouring dwellings in relation to outlook.*

40. Outlook and aspect from a window can be diminished through overbearing development by virtue of a development's bulk and proximity.

41. Hutchwns Close which include three contemporary designed houses border the appeal site to the north-east. It is not disputed that the proposed development would be 26 m from the nearest point of the houses on Hutchwns, and 18.5 m from the rear boundary. This is referred to in SPG 2 Household Development and the proposal is compliant with it, should it be applied. For the reasons I have outlined I cannot see the relevance of the document to the proposed development under consideration.

42. However, the distances given in relation to separation between buildings also relate to whether a proposal is acceptable in relation to outlook and overbearing development as much as it would be compliant in relation to privacy and overlooking. The proposed building is taller and wider than the building which stood on the site but is not significantly closer and is tapered so there is a comparable distance from the rear building line to each of the neighbouring properties to the north-east. The appellant has provided an assessment on daylighting which also demonstrates compliance if SPG 2 were to be applied.

43. I note the concern that visual aspect would be diminished where the occupants would have a view of the coast where this would be lost in the most part because of the size and width of the proposed development. However, as noted by the LPA a private view from a window is not of itself regarded as a planning matter. The view is presently over a vacant development site where a single storey building once stood. This view is likely to change because the site is an infill plot in the settlement and the expectation would be that this would be developed. The view is not a publicly maintained view or a view which should be preserved due to an important vista or focal point.

44. Normally a change of view from for example, a view over through to the coast to a view over a new housing development, is not regarded as a planning consideration even though it may have a financial impact on the value of the houses which lose the view over currently open land. This is not the operation of the planning system which is concerned with land use in the public interest.

45. I therefore consider that outlook in this instance is not significantly diminished to have the effect of overbearing development and is not contrary to LDP Policy SP2.

46. I conclude that the proposal would not harm the living conditions of occupiers of neighbouring dwellings in relation to outlook.

## **Other matters**

### *Planning obligation*

47. The LPA indicates that the application requires 30% affordable housing provision in line with LDP Policy COM5. If on-site provision is considered unfeasible, off-site commuted sum payments would be necessary. Commuted sum payments would also be considered necessary in relation to open space in line with LDP Policy COM11.

48. The appellant does not dispute these findings and indicates a willingness to provide a unilateral undertaking if it is deemed necessary. However, it is not a matter for me to make a case for the appellant and if it is considered that a planning obligation is



necessary to overcome objections and address these matters then it should have been provided in a timely manner during the appeal process. I make no formal finding on the issue, and this is dealt with in the planning balance and conclusions.

*Other matters*

49. I note the concern about the proposed parking arrangement to the rear and effect of air pollution and noise. There are concerns about light pollution, privacy/overlooking, overdevelopment, household waste, loss of views and devaluation, the lack of green space, impact on ecology, no right to alter the Common Land and issues over junction safety onto Severn Road. The LPA also refer to the issue of precedent and lack of space about buildings.
50. I have dealt with the issue of highway safety as a main determining issue in this appeal. I have also considered the right to a view. There is no compelling and technical evidence presented on noise, air pollution, ecology, and light pollution to elevate these concerns to main determining issues. Common Land should there be alterations to this area is a separate consent regime from the planning considerations of this appeal. I do not consider there is an issue of precedent or that this proposal inhibits space about buildings.

**Planning Balance and Conclusions**

51. I am required to determine this proposal in accordance with the development plan unless material considerations indicate otherwise. The starting point is therefore the development plan (FW and LDP).
52. I have found that the development conflicts with the development plan policies and national guidance relating to character and appearance. This factor is given significant weight.
53. I have found that the development complies with the development plan in relation to accessibility, highway safety, and both living condition issues. However, these matters are neutral in the final balance as this is expected of all developments.
54. Therefore, the appeal scheme should be regarded as conflicting with the development plan when taken as a whole, despite the matters where I have identified policy compliance. There are no other material considerations before me that may be regarded of sufficient weight to indicate a decision other than in accordance with the development plan. I make no formal finding on the issue of the absence of a planning obligation since the planning balance is against allowing this appeal.
55. 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 one or more of the Welsh Ministers' well-being objectives.
56. The planning balance is against allowing this appeal.

*Iwan Lloyd*

INSPECTOR