

APPEALS

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

CODE NO.	A/16/3141978 (1770)
APP. NO.	P/15/387/FUL
APPELLANT	MRS H PERRETT
SUBJECT OF APPEAL	CREATE LARGER BALCONY 5M X 2.2M: LOCKS COTTAGE LOCKS COMMON PORTHCAWL
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 this appeal decision is attached as APPENDIX A

CODE NO.	A/15/3141349 (1771)
APP. NO.	P/15/543/FUL
APPELLANT	MR BEN BOARD
SUBJECT OF APPEAL	RETENTION OF BUILDING AS BUILT (AMENDMENT TO P/13/147/FUL) FOR USE AS STUDIO DWELLING BY FAMILY MEMBER: 133 COWBRIDGE ROAD BRIDGEND
PROCEDURE	WRITTEN REPS
DECISION LEVEL	COMMITTEE
DECISION	THE INSPECTOR APPOINTED BY THE WELSH MINISTERS TO DETERMINE THIS APPEAL DIRECTED THAT THE APPEAL BE ALLOWED SUBJECT TO CONDITIONS.

A copy of this appeal decision is attached as APPENDIX B

RECOMMENDATION:

That the report of the Corporate Director Communities be noted.

MARK SHEPHARD
CORPORATE DIRECTOR COMMUNITIES

Background Papers

See relevant application reference number.

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 14/04/16

gan **Melissa Hall BA (Hons), BTP, MSc, MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 06/05/16

Appeal Decision

Site visit made on 14/04/16

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

an Inspector appointed by the Welsh Ministers

Date: 06/05/16

Appeal Ref: APP/F6915/A/16/3141978

Site address: Locks Cottage, Locks Common, Porthcawl, Bridgend CF36 3HU

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 grant of planning permission subject to conditions.
- The appeal is made by Mrs Hazel Perrett against the decision of Bridgend County Borough Council.
- The application Ref P/15/387/FUL, dated 13 June 2015, was approved on 18 August 2015 and planning permission was granted subject to conditions.
- The development permitted is the creation of a larger balcony.
- The condition in dispute is No 2 which states that:
'Prior to the beneficial use of the balcony hereby approved, a 1.8m high solid and obscure screen shall be erected along the entire southern end of the balcony, facing 14 Hutchwns Close. The screening shall be retained in perpetuity'.
- The reason given for the condition is:
'In the interests of residential amenity'.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the condition is reasonable and necessary having regard to the living conditions of neighbours, in particular the privacy of the occupants of 14 Hutchwns Close.

Reasons

3. The appeal site is a detached dwelling with its rear elevation facing Locks Common and the coastline beyond. Its relationship with the closest neighbouring property to the south, 14 Hutchwns Close, is such that it is sited beyond the rear elevation and angled away from this neighbouring dwelling.
 4. It currently has a modest, semi-circular balcony on its rear elevation which, owing to the siting relationship that I have described together with its limited depth and width, allows for little overlooking of the house or private garden at No 14. That is, any overlooking from this balcony is restricted to the western extremities of the neighbouring garden only.
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5. In comparison, the balcony approved under P/15/387/FUL is of a rectangular form and materially larger than the existing, shown on the approved drawings as measuring some 4.5 metres wide by 2.5 metres deep. To this end, it would be brought closer to the boundary with the neighbouring property and extend further into the garden of the appeal site when measured from the rear elevation of the dwelling.
6. The effect of this larger balcony is that it would afford a greater degree of overlooking of the neighbouring garden and would also provide views back towards the neighbouring dwelling over and above that which currently exists. The existing balcony is of a restricted size and shape such that its use is extremely limited. In comparison, the approved balcony is of a size that would enable sitting out for prolonged periods and for several occupants at a time, and would therefore allow for a much more intensive use.
7. At my site visit, I saw that the garden of No 14 is already overlooked to some extent by a window in the first floor side elevation of the appeal dwelling. However, the existence of this window is not adequate reason to add to the lack of privacy of the occupants of the neighbouring dwelling in a manner which I have already shown to be more intrusive than that which currently exists.
8. Furthermore, the presence of people on a balcony of the size and proximity of that approved would be a far more noticeable and obvious intrusion than if the same people were within the confines of a building or using the existing balcony.
9. Hence, the inclusion of the privacy screen required by Condition 2 of the permission would mitigate the additional harmful overlooking impact that I have described. I consider that, without the screen, the proposal would adversely affect the privacy of the occupants of No 14 to the detriment of the living conditions that they should reasonably expect to enjoy. In this context, it would conflict with Policy SP2 of the adopted Bridgend Local Development Plan (LDP) 2013 which requires that new development should ensure that *inter alia* the amenity of neighbouring uses and their occupiers would not be adversely affected.
10. The Council also cites its Supplementary Planning Guidance (SPG) 02 '*Householder Development*' which was adopted in 2008 as SPG to the Bridgend Unitary Development Plan (UDP). However, the UDP has been superseded by the LDP, and the Council has not confirmed that it has been formally adopted as SPG to the LDP. Nevertheless, it is helpful insofar as it advises that a balcony should be located or screened to prevent or minimise overlooking. For the reasons I have described, I consider that the privacy screen would protect this interest.
11. Consequently, and having regard to the advice in Welsh Government 016/2014 '*The Use of Planning Conditions for Development Management*', I find a condition requiring a 1.8m high solid and obscure screen to be erected along the entire southern end of the balcony facing 14 Hutchwns Close to be both reasonable and necessary to protect the living conditions of the occupants of this neighbouring dwelling.
12. I note the appellant's contention that the privacy screen would affect the aesthetics of the balcony. Be that as it may, I do not find that this matter outweighs the harm to living conditions that I have otherwise identified or that the condition should be removed on this basis.

Conclusion

13. For the reasons I have given, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Melissa Hall

Inspector

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 14/04/16

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

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 24/05/16

Appeal Decision

Site visit made on 14/04/16

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

an Inspector appointed by the Welsh Ministers

Date: 24/05/16

Appeal Ref: APP/F6915/A/15/3141349

Site address: 133 Cowbridge Road, Bridgend CF31 3BD

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 grant of planning permission subject to conditions.
- The appeal is made by Mr Ben Board against the decision of Bridgend County Borough Council.
- The application Ref P/15/543/FUL, dated 18 August 2015, was approved on 16 October 2015 and planning permission was granted subject to conditions.
- The development permitted as described on the decision notice is the retention of building as built (amendment to P/13/147/FUL) for use as studio dwelling by family member.
- The condition in dispute is No 3 which states that: *'The building shall not be brought, whether wholly or partially, into residential occupation until three parking spaces have been provided in permanent materials within the site in accordance with the approved block plan. The car parking spaces shall thereafter be retained for parking purposes in perpetuity.'*
- The reason given for the condition is: *'To ensure adequate off street parking is provided in the interest of highway safety.'*

Decision

1. The appeal is allowed and planning permission Ref P/15/534/FUL for the retention of building as built (amendment to P/13/147/FUL) for use as studio dwelling by family member granted on 16 October 2015 is varied by deleting Condition 3 and substituting it for the following condition:

"3) Within one month of the date of this decision, a scheme for the provision of one off-street parking space shall be submitted to and agreed in writing by the local planning authority. The off-street parking space shall be provided in permanent materials in accordance with the agreed scheme within three months of the date of the written agreement of the scheme and shall thereafter be retained."

Procedural Matters

2. The planning application form describes the development as the *'Change of use of existing workshop into studio type dwelling for use by family member'*. However, that description was amended by the Council to also include the retention of the building 'as built'. It is on this basis that the Council made its decision and upon which I determine the appeal.

Background

3. Planning permission was granted for a two storey side extension, the extension of the existing single storey extension to create a second storey, the creation of additional parking and construction of a new workshop under Ref P/13/147/FUL. Whilst it is the appellant's understanding that this permission required the provision of 3no car parking spaces, the Council has confirmed that no condition requiring the provision or retention of the spaces was attached to the permission. Rather, the Council has stated that the submitted plans indicated that 3no off-street spaces would be provided and that it considered this provision acceptable, not least due to the pressure for on-street parking in the vicinity. However, in the absence of a condition on the planning permission to this effect, there is no means of securing this provision.
4. The appellant has confirmed that no work has yet been undertaken in relation to the extensions to the dwelling. However, I understand that work commenced on the workshop albeit it became apparent to the Council that the development was not being carried out in accordance with the plans approved under P/13/147/FUL. Consequently, a subsequent application made under P/15/543/FUL sought to regularise the situation, but also included the conversion of the workshop building to what the Council describes as a 'studio dwelling' incorporating a lounge, kitchen, one bedroom and a bathroom to be used by a family member in association with the main dwelling. In granting planning permission for the building in October 2015, the Council imposed a condition to the effect that 3no off street parking spaces shall be provided prior to the residential occupation of the building. It is this condition with which the appellant takes issue and which is therefore the subject of this appeal.

Main Issue

5. Against this background, the main issue is whether the condition is reasonable and necessary having regard to the nature of the development and highway safety.

Reasons

6. The appeal dwelling fronts the A473 Cowbridge Road. However, as there are parking restrictions in the form of double yellow lines to the front of the property and it is elevated above the road with steps up to the property providing pedestrian access only, the principal access to the dwelling is to the rear.
7. The rear of the property is located at the end of a narrow cul-de-sac and off a turning head on Uxilla Terrace. At the time of my site visit, I observed that there is significant pressure for on-street parking and, owing to the restricted width of the road, vehicles are parking on the footway and there is little opportunity for vehicles to pass side by side. I also acknowledge the concerns of other parties in this regard.
8. Nevertheless, I am also told that the appeal site did not benefit from any off-street parking provision prior to the planning application being made in 2013 but relied wholly on on-street parking; the photographs provided appear to corroborate this insofar as they show a solid wall with close boarded fence and a pedestrian access gate only abutting the highway.
9. From my reading of the Council's evidence, the appropriate level of off-street parking for a three bedroom dwelling is 3no spaces. Thus, in determining the original application in 2013 for the extensions to the dwelling and the construction of a workshop, the Council concluded that the 3no parking spaces shown on the submitted drawings would be acceptable and would accord with its adopted Supplementary

Planning Guidance 17 '*Parking Provision*'. Although I have not been provided with a copy of this guidance, the appellant has not disputed the total number of parking spaces being sought.

10. However, I note that the application made under P/15/543/FUL was limited only to the workshop building and its conversion to residential use. That is, it did not include the extensions to the main dwelling approved under the previous application.
11. At the time this subsequent application was made, the Council was content to rely on the 3no spaces shown on the submitted drawings. However, it is clear that such a requirement relates to the dwelling as extended and the use of the former workshop building as a studio dwelling. It therefore follows that if the work in respect of the construction of the extensions to the dwelling has not commenced, requiring the provision of the total number of spaces shown on the approved drawings would not be justified.
12. Whilst the Council makes reference to Welsh Office Circular 35/95 '*The Use of Conditions in Planning Permissions*', it has been replaced by Welsh Government Circular 016/2014 '*The Use of Planning Conditions for Development Management*' which outlines the six tests for the validity of planning conditions. In particular, paragraph 3.15 states that a condition must fairly and reasonably relate to the development to be permitted.
13. In this context, a condition would not be reasonable if it attempts to control something not created by it in the first place or simply to meet a need that already exists. As the appeal before me relates to the 'studio dwelling' only, and this development in itself would not create a demand for 3no car parking spaces, a condition seeking the provision of this number of spaces would be both unnecessary and unreasonable. Furthermore, it would be unreasonable to require this number of parking spaces simply because there is already an existing need due to considerable pressure for on-street parking in the vicinity. It would therefore fail the tests outlined in the Circular in this regard.
14. Nevertheless, I accept that the studio dwelling would potentially generate a parking requirement in its own right and in the long term, notwithstanding that it is currently occupied by a family member who does not own a car. To this end, the Council suggests an amendment to the wording of the condition to the effect that one parking space should be provided within 3 months following the approval of a parking scheme. I consider that a requirement to provide 1no off-street parking space would accord with the aims of Policy SP2 of the adopted Bridgend Local Development Plan 2013 to ensure that the amenity of neighbouring uses and their occupants would not be adversely affected. Having regard to the advice in the Circular, I find such a condition to be both reasonable and necessary in the interest of highway safety.
15. The Council has suggested a second condition requiring the submission of a scheme for 2no additional off street parking spaces, which should be provided before the extensions to the host property at 133 Cowbridge Road are brought into beneficial use. However, if the Council considered that the provision of these spaces was necessary for the original development comprising of the extensions and the workshop to proceed, it ought to have imposed such a condition on planning permission P/13/147/FUL.
16. That is, having regard to the advice in the Circular, it is not appropriate to impose this condition retrospectively on a permission which relates to a different form of

development and the requirement does not reflect the nature and scale of that now proposed. Whilst I note the concerns of the Council and residents regarding on-street parking pressure in the vicinity, such a condition would not meet the tests outlined in the Circular and should not therefore be attached to the permission.

Conclusion

17. For the reasons I have given, and having regard to all matters raised, I conclude that the appeal should succeed. I shall vary the planning permission by deleting the disputed condition and substituting it for an amended Condition 3 as indicated in my decision.

Melissa Hall

Inspector