



Penderfyniadau Apêl

Appeal Decisions

Ymweliad â safle a wnaed ar 27/08/13

Site visit made on 27/08/13

gan James Ellis LLB (Hons) Cyfreithiwr
Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 8/11/13

by James Ellis LLB (Hons) Solicitor
an Inspector appointed by the Welsh Ministers
Date: 8/11/13

Appeal Ref: APP/B6855/C/13/2201447 (Appeal A)

Site address: 27 Hendrefoilan Drive, Sketty, Swansea SA2 7NG

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 Act").
 - The appeal is made by Mr Gyanendra Pande against an enforcement notice ("the EN") issued by City and County of Swansea Council.
 - The Council's reference is ENF 13/003.
 - The EN was issued on 13 June 2013.
 - The breach of planning control as alleged in the EN is the unauthorised erection of a domestic extension.
 - The requirements of the EN are;
 - (i) Demolish the unauthorised extension
 - (ii) Remove all material, resulting from the demolition of the extension, from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2) (a) of the Act.
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Appeal Ref: APP/B6855/A/13/2201444 (Appeal B)

Site address: 27 Hendrefoilan Drive, Sketty, Swansea SA2 7NG

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 Act against a refusal to grant planning permission.
 - The appeal is made by Mr Gyanendra Pande against the decision of City and County of Swansea Council.
 - The application Ref 2013/0456, dated 13 March 2013, was refused by notice dated 31 May 2013.
 - The development proposed is to convert existing detached garage to an exercise training/room with attached shower. Relocate front door to access the proposed training room.
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Decision – Appeal A

1. I dismiss the appeal, uphold the EN and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Decision – Appeal B

2. I dismiss the appeal.

Procedural matters

3. In respect of Appeal A, the ground of appeal under section 174(2) (a) of the Act is that planning permission should be granted for what is alleged in the EN. The proposed development the subject of Appeal B has already been carried out and is that which is referred to in the EN. I shall therefore deal with both appeals together and refer to the development as "the Development".
4. The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2013 which amended the Town and Country Planning (General Permitted Development) Order 1995 ("the GPDO"), came into force on 30 September 2013. This brought about changes to existing householder permitted development rights in Wales, including the enlargement, improvement or other alterations of a dwellinghouse. I therefore sought the views of the parties as to how the Development compares with the amended tolerances for permitted development under Class A of Part 1 of the Second Schedule to the GPDO. I shall take account of Class A (as amended) and the views of the parties as considerations in making my determination.

Main Issues

5. The main issues are: the effect of the Development on the living conditions of the occupiers of neighbouring residential properties in terms of outlook; the effect of the Development on the character and appearance of the area; and whether any other considerations would outweigh any harm which I might find in respect of the previous main issues.

Reasons

6. The appeal property is a detached dwelling located within an established residential area. As I saw on my site visit, a number of dwellings in the area have been extended and/or have had outbuildings erected within their curtilages. Some of the extensions and outbuildings are flat roofed, as are many garages which appear to have been constructed when the dwellings were originally built. Levels in the area vary. I understand that the works to construct the Development utilised some of a detached garage which was on the site of the Development adding a single storey link section to the house, a single storey extension to the front of the garage and a single storey extension to its rear. I am told by the appellant that the roof height of the Development is about 0.8 metres higher than that of the former garage, and that the Development is 1.35 metres longer to the east than the garage and 1.5 metres longer to the west. Evidence before me suggests that the length of the former garage was 6.9 metres and that its height was just over 3.0 metres when measured from the ground floor level at the rear of 7 Glenfield Close, a neighbouring dwelling.

Living conditions

7. The southern (side) wall of the Development is blank and runs along the boundaries between the appeal property and the rear gardens of Nos 6 and 7 Glenfield Close. I visited both of the neighbouring properties during the course of the site visit. It is accepted by the Council that the Development does not have a material adverse impact on the living conditions of the occupiers of the neighbouring properties in terms of overlooking leading to loss of privacy, or receipt of light. However, I need to consider outlook.
8. There are direct views towards the Development from ground floor rear windows at 7 Glenfield Close which light a lounge and a kitchen area. The evidence indicates that

the southern wall of the development is about 6.2 metres away from the windows in question. Given the height of the blank wall, its width that can be seen from the windows, and its proximity to the windows, I consider that the Development has a dominating and oppressive impact on the outlook from the windows. This is notwithstanding that the southern wall of the Development has been painted in a light colour. To my mind, the Development also has an unacceptable enclosing and claustrophobic effect when viewed from a considerable part of the rear garden to No 7. The current occupiers of No 7 have not objected to the Development. This is noted by me, but I must also have regard to the living conditions of future occupiers of No 7.

9. The appellant drew a comparison between the effect of the Development and that of the former garage. Reference was made to fields of view from both windows at the rear of No 7 and percentage reductions in outlook. However, the calculations fail to take into account the increase in height of the Development over the garage which, of course, has a bearing on outlook. Overall, it seems to me that the area of the southern wall of the Development that can be seen from the windows, because of its 1.35 metre increase in width to the west and its increase in height, is considerably more than that of the former garage. As such, whilst noting the comparison drawn by the appellant, I nevertheless find that whilst the former garage may have had a negative effect on the outlook enjoyed by the occupiers of No 7, the construction of the Development has only served to make that situation materially worse.
10. The Development can be seen from ground floor windows at the rear of No 6 Glenfield Close. However, the Development abuts only a small part of the rear garden of No 6 and views towards the Development from the windows are oblique. I therefore find that the Development has not had a material adverse impact on the outlook enjoyed by the occupiers of No 6.
11. Overall, however, for the reasons given in paragraphs 8 above, I conclude that the Development has had a significant detrimental impact on the living conditions of the occupiers of a neighbouring property. As such the Development is contrary to Policy HC7 of the City and County of Swansea Unitary Development Plan, adopted in 2008, which (amongst other matters) seeks to protect residential amenity.

Character and appearance

12. The Development can be seen from public viewpoints in both Hendrefoilan Drive and also from Glenfield Drive. The Council has not taken issue with views towards the Development from Hendrefoilan Drive but has raised concerns with views from Glenfield Drive, which is at a lower level
13. When viewed from Glenfield Drive, the Development appears to be some distance from it. It is seen to be located behind the garages to Nos 6 and 7 Glenfield Drive but set below the main roof of the appeal property and the upper parts of dwellings behind the appeal property. The Development extends behind the original dwelling on the appeal site but I nevertheless consider that it blends into its backdrop. In this respect, the Development is similar to many of the flat roofed extensions and outbuildings in the area that I saw on my site visit. In my opinion, the Development does not have an unacceptable visual impact when seen from Glenfield Drive.
14. I therefore conclude that the Development has not resulted in significant harm to the character and appearance of the area. As such, it is not contrary to Policies EV1 and HC7 of the UDP which, amongst other matters, seek to prevent such harm.

Other considerations

15. The evidence before me indicates that the Development does not meet the amended GPDO tolerances in two respects. First of all, the Development is wider than the permitted tolerance relating to width by 340 millimetres. Within the context of guidance set out in paragraph 24 of Technical Advice Note 9: Enforcement of Planning Control, I consider this to be a slight variation given the overall width of the dwelling as extended. Secondly, the height of the southern wall of the extension (which is within 2 metres of the appeal site's boundary) exceeds 3 metres at eaves level height. The height to eaves level is at about 4 metres at western end of the extension but the site slopes upwards to the eastern end of the extension. The Council has advised that the eaves height measures 3.3 metres when measured from the driveway at the eastern end. To my mind, the difference between the eaves height of the extension and the tolerance specified in the GPDO cannot be said to be slight; rather it is material. Whilst the Development meets certain tolerances of the GPDO as amended, I can only give little, if any, weight to this, given that the difference in eaves height is material.
16. The appellant submitted drawings showing what could be built on the appeal site as permitted development under the amended GPDO. It is clear from the evidence that an extension could be built onto the original house (using current permitted development rights) that would have a much worse impact on the living conditions of the occupiers of No 7 Glenfield Drive. The extension shown on the drawings should be looked at in the context of a fallback position. Whilst the extension could be built, there is no evidence before me to suggest that it is likely that such a structure would be built if the appeals were to be dismissed. I therefore give limited weight to this fallback position.
17. Other drawings showing what could be built under the GPDO before the recent amendment were submitted as part of the appellant's case. However, I can only give little or no weight to the schemes because of the change to the GPDO.
18. The appellant and his wife are of an age where they are finding it increasingly difficult to use stairs to access the first floor rooms at their house. The Development would aid mobility and enable the appellant and his wife to live reasonably within the property without internal access issues. However, whilst I can appreciate the assistance that the Development would provide to the appellant and his wife, personal circumstances arguments of this type seldom outweigh significant harm to planning interests. Such is the case here.
19. The Development is 'sustainable development' as defined and supported in National and Local Policy, but this is insufficient to override the harm that I have found. I again note that the removal of the Development would be disruptive to the occupiers of No 7 Glendale Close and, no doubt, to the appellant and his wife. I am also aware that the Development was carried out on the mistaken understanding that it was permitted development under the then GPDO. However, when balancing all the considerations before me, I find that those in favour of the Development are heavily outweighed in this case by cogent harm to planning interests.
20. I appreciate that my decision results in an interference with the rights of the appellant and his wife in respect of private and family life and home, and protection of property. Accordingly, Article 8 of the European Convention on Human Rights ("the ECHR") is engaged, as is Article 1 of the First Protocol of the ECHR. However, I consider that

the level of interference my decision represents is proportionate after taking into account the conflicting matters of public and private interests.

Conclusion

21. For the reasons given above, and whilst I can appreciate that my decisions will be a disappointment to the appellant and his wife, I conclude that both Appeal A and Appeal B should not succeed.

James Ellis

Inspector