

## Penderfyniad ar yr Apêl

## Appeal Decision

Ymweliad â safle a wnaed ar 12/02/15 ac 2/3/15 Site visits made on 12/02/15 and 2/3/15

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

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

Arolygydd a benodir gan Weinidogion Cymru

an Inspector appointed by the Welsh Ministers

Dyddiad: 09/06/15

Date: 09/06/15

**Appeal Ref: APP/B6855/C/14/2228929**

**Site address: 135 Higher Lane, Langland, Swansea, SA3 4HQ**

**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 Mr D Clarke against an enforcement notice issued by City and County of Swansea Council.
- The Council's reference is ENF14/0011.
- The notice was issued on 17 October 2014.
- The breach of planning control as alleged in the notice is without planning permission at the land, the erection of a single storey side extension and associated retaining wall.
- The requirements of the notice are (i) demolish the unauthorised single storey side extension (the location of which is shown cross-hatched in red on plan 2 dated 23/2/2012) and reinstate the dwelling in external finishes to match the existing dwelling; (ii) remove all material, resulting from the demolition of the extension, from the land.
- The period for compliance with the requirements is 6 months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under Section 177(5) of the Act as amended falls to be considered.

### Decision

1. The appeal is allowed on ground (f), and the enforcement notice is varied by the deletion of paragraphs 5(i) and 5(ii) under the heading and the substitution with the following requirement:

The carrying out of works to the side single storey extension so that it accords with the details shown on plan numbers SW1114/001 and SW1114/002 dated 10 December 2014.

Subject to this variation the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under Section 177(5) of the Town and Country Planning Act 1990.

## **Procedural Matter**

2. The enforcement notice relates to both 135 and 137 Higher Lane, Swansea although the appeal has been made by the owner of 135 Higher Lane only. It is claimed that the retaining wall that forms part of the alleged breach is partially situated on land comprising 137 Higher Lane and I have taken this into account in determining the appeal.

## **Background**

3. The appeal site is part of a relatively modern residential estate and within a row of bungalows set back from the road with their gable ends facing the street. No 135 is situated in an elevated position to properties to the north and north east and in particular its immediate neighbour No 137. It is linked to No 137 by an original garage which has more recently been converted into living accommodation.
4. Planning permission was granted for a single storey extension to the north east side of the property in 2010 utilising the existing linked garage and including a new porch element projecting forward along the common boundary with No 137 and being narrower in width than the converted garage element. A new mono pitch roof was approved over the whole of the extension and cutting into the existing main roof of the bungalow below its ridge line. Three windows were approved on the side elevation facing No 137.
5. An extension was subsequently constructed but did not accord with the approved plans with the front porch element being provided to the full width of the converted garage, the roof being provided with a steeper pitch culminating at the same level as the ridge of the main dwelling and the inclusion of a window in the front and three rooflights in the north east roof slope. A retaining wall was constructed along the boundary with No 137 and culminating at the pavement edge. It is this extension and retaining wall that are the subject of the enforcement notice to which this appeal relates.

## ***The Deemed Planning Application for Planning Permission***

6. The appellant has not appealed on ground (a) – that planning permission should be granted for that which is alleged in the notice – however, as the appropriate fee has been paid the deemed application for planning permission falls to be considered. The deemed application is for the erection of a single storey side extension and associated retaining wall.
7. The appellant has provided an alternative set of drawings in relation to the deemed application and has requested that these form the basis of my determination in this regard. The plans seek permission for the extension as built with the exception of the front porch extension which would be reduced to a width of 1.85 metres. This would accord with the width of this part of the extension approved by the Council under the 2010 planning permission. The front porch window would be removed as a result of the reduced width. The plans seek to retain the steeper roof pitch, the three rooflights and the retaining wall.
8. It is established law that permission can be given at appeal for all or part of a development providing that the resulting permission is for the whole or part of the breaches alleged in the enforcement notice. In this instance I find the alternative plans would involve development that is substantially different to the matters constituting the breaches in the notice as the development would involve demolition of

part of the structure and the re-building of some of the walls. After taking account of the plans I find that consideration of the alternative scheme would go beyond the powers available to me under Section 177(1) of the Town and Country Planning Act 1990 (the Act). As such whilst I acknowledge that the plans have been presented in an attempt to overcome some of the concerns, I am unable to take them into consideration in determining the deemed planning application. My determination has therefore been made on the basis of the plans that formed the original application to the Council.

### **Main Issues**

9. The main issues are the effect of the extension and retaining wall on the living conditions of neighbouring residents with particular regard to outlook.

### **Reasons**

10. Due to the orientation and distance from other properties I am satisfied that any impact on outlook arising from the development is limited to the occupants of No 137 Higher Lane.
11. The development is situated at a significantly higher level to that of No 137 and I noted on my site visit that No 137 has two bedroom windows facing the extension and retaining wall. The outlook from the bedroom window closest to the front elevation of the property is not significantly affected by the development as the siting and orientation of the extension is such that it does not directly impact on this window. However, the bedroom window closest to the garage is totally dominated by the new extension to the front of the former garage. Its elevated nature with such a high vertical wall in very close proximity to this window is overpowering and oppressive. I find this to be harmful to the outlook from this window.
12. The extension is situated to the west of No 137's bedroom windows. In my judgement, due to the orientation of the extension and the position of the existing dwelling on higher ground and in close proximity to No 137 there will not be any significant increase in the loss of light caused to No 137.
13. I note the representations in respect of overlooking from the three windows in the side elevation of the extension and the need for these to be fitted with obscured glass. I noted on my site visit that these are fitted with a film that obscured views from them. Notwithstanding this, due to the height of the windows in relation to those in the side elevation of No 137 and their position above average head height from the finished floor level in No 135 I do not consider that there would be any significant loss of privacy to the occupants of No 137 arising from these windows. Similarly, the three rooflights are sufficiently high to not result in any loss of privacy to the adjacent property.
14. The retaining wall that has been constructed forms part of the new extension and then continues forwards to the front of the driveway of the appeal site. I consider that the retaining wall as a stand alone element would not have the same effect as that of the extension as it is not of a height or scale that would give rise to the dominating effect that I have found harmful in the case of the extension.
15. I note concerns regarding the loss of parking to No 137 as a result of the alleged encroachment of the wall onto the adjacent driveway. I have little evidence before me as to the effect the wall has had on the original width of the driveway and whether any significant harm has resulted to the ability to park a car. The Council has

confirmed that it does not seek to remedy this element of the development in the enforcement notice requirements and on the evidence before me I have no reason to disagree with the Council in this regard and find the wall to be an acceptable form of development. I note the concerns of the neighbour that the retaining wall has been constructed on land outside the appellant's control and that the enforcement notice relates to both properties as a result but these matters are not pertinent to my determination of the planning merits of the development.

16. Notwithstanding my findings in respect of the retaining wall, I conclude that the extension has a harmful effect on the living conditions of the occupants of No 137 resulting from its oppressive and overpowering scale and position. As such it is not in accordance with the requirements of the adopted City and County of Swansea Unitary Development Plan (UDP) policies EV1, HC7 and the Council's Supplementary Planning Guidance "A Design Guide for Householder Development" (SPG). My conclusion in relation to the extension is consistent with the findings of the Inspector in relation to a previous appeal in relation to this development.<sup>1</sup>
17. I conclude that planning permission will not be granted on the deemed application.

### ***The Appeal on Ground (f)***

18. The ground of appeal is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objection. The arguments put forward under this ground are in connection with the planning merits of the development. Recent case law has held that where a deemed planning application is determined at appeal, consideration can be given to the planning merits of any lesser steps that could overcome any detriment to amenity.
19. Section 173(4) of the Act enables the local planning authority to specify different categories for the remedial requirements of the notice to either remedy the breach or to remedy any injury to amenity which has been caused by the breach. The notice does not expressly identify which remedial requirement is being sought. Nonetheless it is evident that the Council does not seek to remedy the breach in respect of the retaining wall and it would appear that on that basis it is seeking to resolve the injury to amenity rather than to resolve the breach. I have considered the appeal under ground (f) on this basis.
20. Although the Council contends that no plans have been provided to show the extent of the alternative works proposed by the appellant, as set out above the appellant has provided a set of alternative plans. It is pertinent to my considerations that there is a fallback position in the extant 2010 planning permission. I give this considerable weight as there is a high likelihood that it would be implemented should the current appeal be dismissed as elements such as the converted garage form part of the current development. The alternative plans would reduce the porch extension to that approved in 2010 and I consider that the reduced width would make a material difference to the outlook from No 137 as a result of moving the very high vertical element of this part of the extension further back from the boundary and the affected window. I consider that this alteration would overcome the concerns raised in relation to the deemed application.

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<sup>1</sup> Appeal Reference APP/B6855/A/12/2186151, 15 February 2013

21. The plans seek to retain the roof as built. The main change from the 2010 permission relates to the roof pitch which terminates at the ridge of the main dwelling rather than cutting in at a lower level. The eaves height would remain as existing and as approved under the 2010 permission. I consider that the impact of the slightly increased pitch arising from this change is negligible and would not result in any significant harm to the outlook from No 137. Due to the position of the appeal dwelling on the site and the set back position of the extension the slight change to the pitch would not cause any significant harm to the character and appearance of the dwelling or area when viewed from the wider surroundings. I conclude that the submitted alternative scheme would remedy the injury to amenity that results from the current development.
22. Whilst I am unable to grant planning permission for the works shown in the alternative plans, these works could be required as a lesser step in the requirements of the notice. However, it is not open to me to impose conditions under ground (f). I note the neighbour's request for obscured glazing to be fitted in the side windows and to be the subject of a condition. Whilst this request is acknowledged, in view of my conclusions in relation to the possible loss of privacy arising from these windows I find this would not be necessary or reasonable. I note reference to the previous appeal decision in this regard but am satisfied that the Inspector in that case reached a similar view that overlooking would not occur due to the small size and height of the windows. As such compliance with the alternative plans comprises a lesser step that would remedy the injury to amenity. The appeal on ground (f) therefore succeeds.

***The Appeal on Ground (g)***

23. The ground of appeal is that the time given to comply with the requirements of the notice is too short. The Council has suggested 6 months to demolish the extension and the appellant has suggested 9 months. Given that I have found that a lesser step would remedy the injury to amenity and that the step requires less work than total demolition I consider that six months would be reasonable and appropriate to remedy the harm resulting from the current development. The appeal on ground (g) fails.

*Vicki Hirst*

INSPECTOR