The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 15/10/18

gan Richard E. Jenkins BA (Hons) MSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 30/11/18

Appeal Decision

Site visit made on 15/10/18

by Richard E. Jenkins BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 30/11/18

Appeal Ref: APP/B6855/C/18/3208239

Site address: Hengoed Park Care Home, Cefn Hengoed Road, Winch Wen, Swansea, SA1 7LQ

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 Des Davies of Hengoed Court Care Home against an enforcement notice issued by City and County of Swansea Council.
- The enforcement notice, numbered ENF2017/0135, was issued on 6 July 2018.
- The breach of planning control alleged in the notice is failure to comply with condition No.4 of a planning permission Ref: 2012/0461.
- The development to which the permission relates is the construction of an 120 bed nursing home in a part three, part four storey building, and retention of temporary access road leading from Cefn Hengoed Road (Amendment to planning permission 2010/0920 granted 16 November 2010). The condition in question is No.4 which states: Prior to the beneficial occupation of the development hereby approved, the use of the temporary access road shall cease and a scheme for the re-instatement of the land, including a timescale for the works, shall be submitted to and agreed in writing by the Local Planning Authority. The re-instatement shall be carried out in accordance with the approved scheme unless otherwise agreed in writing by the Local Planning Authority. The notice alleges that the condition has not been complied with in that the development is occupied but a scheme for the re-instatement of the temporary access road has not been approved by the Local Planning Authority and the temporary access road remains in situ.
- The requirements of the notice are: i) Excavate out all imported material used to construct the temporary track; ii) Remove material off site to contractor's tip; iii) Import sub and top soil to site; iv) Spread and backfill the trench of former track with sub soil to within a depth of 100mm of surrounding ground levels; v) Backfill trench to the surrounding ground levels with a minimum depth of 100mm top soil; and vi) Sow with an amenity grass seed to BS 4428. The mix should contain 70% perennial ryegrass.
- The period for compliance with the requirements is 3 months beginning with the day on which 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 not been paid within the specified period, any application for planning permission deemed to have been made under section 177(5) of the Act as amended has lapsed.

Decision

1. The appeal is allowed under ground (g) only. It is directed that the enforcement notice be varied by the substitution of 3 months with 6 months as the period for compliance. Subject to this variation, the enforcement notice is upheld.

Preliminary Matters

2. Given that the prescribed fees have not been paid, there is no ground (a) appeal or any application for planning permission deemed to have been made under section 177(5) of the Act. For the avoidance of any doubt, that means that planning merits are not relevant to this appeal, including any such arguments advanced under the ground (f) appeal.

Reasons

3. The appeal relates to a temporary access track formed as part of the development permitted under Ref: 2012/0461 which granted planning permission for a nursing home and a temporary access road leading from Cefn Hengoed Road. The temporary access track was utilised during the construction of the nursing home, although Condition No.4 of that permission required the use of the temporary access road to cease and a scheme for the re-instatement of the land to be submitted to and agreed in writing by the Local Planning Authority (LPA) prior to the beneficial use of the development. The same condition also stated that the re-instatement of the land should be carried out in accordance with the approved scheme unless otherwise agreed in writing by the Local Planning Authority.

4. The beneficial use of the development has now commenced. However, given that a scheme for the reinstatement of the land has not been approved and the access track remains in situ, the LPA alleges that there has been a breach of condition.

The Ground (f) Appeal

5. An appeal under ground (f) is that the requirements of the enforcement notice are excessive and that lesser steps would overcome the objections. Specifically, the appellant points to the fact that the land on which the access track is formed is currently allocated for residential development in the emerging Swansea Local Development Plan (LDP) and that an application for the development of the site is currently under consideration. Given that the development of the site would necessitate the removal of the track, it is therefore submitted that the temporary closure of the access track would be sufficient until such works commence.

6. I have no doubt that the development of the site would significantly alter the open nature of the site and surrounding area. It is also reasonable to assume that the policy restrictions associated with its current designation as a Green Wedge would no longer apply should the site remain as a residential allocation in an adopted version of the LDP. Nevertheless, the LDP is not yet adopted and I have not been made aware of any grant of planning permission relating to the development of the site. The lesser step described by the appellant does not, therefore, represent a valid fall-back position. On this basis, and having considered all matters raised, I find that the temporary closure of the access track would fail to satisfactorily remedy the breach of planning control. It would also fail to remedy the identified injury to amenity.

7. I recognise the perceived tension between such a finding and the emerging development plan position, particularly given that the Plan is at an advanced stage of Examination. However, expediency is a matter for the Council and it is well established that there is no jurisdiction for an Inspector to determine whether the LPA has complied with its obligation under Section 172 of the Act. Furthermore, for the reasons set out above, any potential solutions requiring the consideration of planning merits are also beyond the scope of this ground (f) appeal.

8. For these reasons, and having considered all matters raised, I conclude that the appeal under ground (f) must fail.

The Ground (g) Appeal

9. An appeal under Section 174(2)(g) of the Act is that the time given to comply with the requirements of the notice is too short. In this case, the period for compliance is three months beginning with the day on which the enforcement notice takes effect.

10. The appellant contends that the three month period is inadequate to commission and satisfactorily complete the required works and has suggested that a six month period would comprise a more appropriate timescale. The LPA has, through its written submissions, clarified that it would not object to a six month period of compliance. Within this context, and having had full regard to the available evidence, I concur that this would represent a more appropriate and pragmatic period for such works to be undertaken. The period of compliance should therefore be extended to six months.

11. To this limited extent, the appeal under ground (g) should succeed.

Overall Conclusions

12. Based on the foregoing analysis, I conclude that the appeal should be allowed under ground (g) only and that the enforcement notice should be varied by the substitution of the 3 month period for compliance with a period of 6 months.

13. Subject to that variation, the enforcement notice should be upheld.

Richard E. Jenkins

INSPECTOR