The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 26/10/15

gan Clive Nield BSc(Hon), CEng, MICE, MCIWEM, C.WEM

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 04/11/15

Appeal Decision

Site visit made on 26/10/15

by Clive Nield BSc(Hon), CEng, MICE, MCIWEM, C.WEM

an Inspector appointed by the Welsh Ministers

Date: 04/11/15

Appeal 1 - Ref: APP/B6855/C/15/3132603
Site address: 38 (Plot 22) Ladysmith Road, Treboeth, Swansea, SA5 9DL

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 Jonathan Hale of Hale Construction Ltd against an enforcement notice issued by the City and County of Swansea Council.
- The Council's reference is ENF15/0012.
- The notice was issued on 5 August 2015.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a dwelling house and garage on the land
- The requirements of the notice are: a) demolish the unauthorised dwelling house; and b) remove all the resultant materials resulting from the demolition of the unauthorised dwelling house from the land.
- The period for compliance with the requirements is 12 months.
- 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. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Appeal 2 - Ref: APP/B6855/A/15/3132601
Site address: 22 Ladysmith Road, Treboeth, Swansea, SA5 9DL

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 refusal to grant planning permission.
- The appeal is made by Mr Jonathan Hale of Hale Construction Ltd against the decision of the City and County of Swansea Council.
- The application Ref 2015/0701, dated 2 April 2015, was refused by notice dated 17 July 2015.
- The development proposed is retention and alteration of the detached dwelling house.

Decisions

Appeal 1 - Enforcement Notice

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal 2 – Planning Application

2. The appeal is dismissed.

Procedural Matters

3. The appeal property is variously referred to as 22 or 38 Ladysmith Road. Its postal address is now No. 38; 22 refers to the number of the plot on the developer's building site for the new estate.

Deemed Application for Planning Permission

4. Although no appeal has been made under ground (a) and an earlier application to retain the dwelling in its present form was refused and dismissed on appeal in 2014, the deemed application for planning permission for the development comprising the alleged breach falls to be considered under this enforcement appeal.

5. In the previous appeal decision (Ref APP/B6855/A/14/2213675), dated 29 May 2014, the Inspector explained the relationships between the appeal property and the pre-existing neighbouring properties and concluded, in particular, that it causes material harm to the living conditions of the occupiers of Nos. 57 and 59 Gelli Aur contrary to policies EV1, EV2 and HC2 of the City and County of Swansea Unitary Development Plan. No further evidence has been put forward to justify any other conclusion, and I reach the same conclusion for the same reasons. The deemed application is not successful.

Planning Application Appeal

6. An application to alter the appeal property by replacing the side gable facing Gelli Aur with a hipped roof in order to reduce the visual impact on Nos. 57 and 59 was submitted in June 2014 but was refused by the Council and subsequently dismissed on appeal in January 2015 (Ref. APP/B6855/A/14/2225522). The application subject to the current appeal proposes more substantial alterations to the appeal property to reduce its scale and massing along the Gelli Aur boundary. These comprise the removal of the entire roof structure and its replacement with a roof with a ridge height some 0.6m lower over part of the house, alteration of 4 metres width of the house to single storey (roof ridge 2.6 metres lower than existing) with upstairs accommodation in the roof space served by dormers to the front and rear, and moving of the front gable feature to the side of the house furthest from Gelli Aur.

7. These changes would reduce the visual impact when viewed from the Gelli Aur properties, and the main issue to be considered is whether or not it would then be acceptable in terms of effects on the amenity of those neighbouring properties.

8. In the report to committee the Council's Head of Economic Regeneration and Planning made the assessment that the revised design would provide an acceptable level of amenity for the Gelli Aur residents and recommended permission be granted. However, the committee rejected that advice, and the Council now argues that the single storey element would still have an end wall in the same position with a ridge height of 7 metres and that the position of that wall would be much closer to the Gelli Aur properties than recommended in the Council's adopted supplementary planning guidance, Places to Live: Residential Design Guide.

9. The Design Guide recommends that 15 metres should be the minimum acceptable distance between a windowed elevation of an existing house and the side wall of a new building. At present the end wall of the appeal property is only 12.2 metres from

the rear elevation of 59 Gelli Aur and 8 metres from the conservatory at the rear of 57 Gelli Aur. The proposed single storey end wall would still be in the same position, albeit with a ridge height of 7 metres rather than 9.6 metres. The proposed end of the remaining 2 storey part of the appeal property would be some 4 metres further back.

10. The Appellant has made comparison with the house originally granted planning permission on Plot 22. It is not disputed that the present house has been built almost 2 metres closer to the side boundary and some 3.5 metres further to the rear of the plot than the development originally granted planning permission. It is also acknowledged that its finished floor level is higher than the original permission: the Appellant says 0.5 metre higher: the Council says 2.1 metres higher. Thus the proposed side wall of the remaining 2 storey part of the house would be about 2 metres further from the side boundary than the house originally permitted and, on this basis, even though it has been built at a higher level, it might be considered to be as acceptable as that original permission. However, one cannot ignore the side wall of the proposed single storey part, which would remain on the same line as at present.

11. That wall would be 7 metres high to the ridge and only 12.2 metres from the rear elevation of No. 59 and 8 metres from the rear conservatory of No. 57. Whilst the Design Guide does not set immutable standards, it does make recommendations on good practice, and it is also relevant that the 15 metres distance referred to is a recommended minimum distance. The distances involved in this case are significantly less than 15 metres and, even allowing for the reduced height of the end wall of the appeal property, I consider it would still appear dominant and overbearing from the rear windows, conservatory and gardens of Nos. 57 and 59 Gelli Aur.

12. I conclude that the proposed revised scheme would still be unacceptably harmful to the residential amenity of those properties and contrary to Unitary Development Plan policies ENV1, ENV2 and HC2. For the reasons given above I conclude that the appeal should be dismissed.

13. In reaching this conclusion I have given consideration to the human rights of the owner/occupiers of the appeal property, Mr and Mrs Mainwaring and their family, even though these rights have not been specifically raised. The dismissal of this appeal is likely to result in significant interference to their private and family life and to their home and private property, and these rights are contained in Article 8 of the European Convention on Human Rights and Article 1 of the First Protocol of the Convention. However, that interference must be balanced against the public interest in pursuing the legitimate aims stated in those Articles, particularly the economic wellbeing of the Country (which includes the preservation of the environment) and the protection of the rights and freedoms of others.

14. The objections to the proposed amended development are serious ones, in particular its effects on the living conditions of neighbouring residents, and the public interest can only be safeguarded by dismissal of the appeal. I have considered the possibility of granting permission subject to conditions but no conditions would alleviate the harm identified. In all the circumstances I consider the dismissal of this appeal is necessary in a democratic society in furtherance of the legitimate aims stated. They do not place a disproportionate burden on the Mainwaring family, and I consider that dismissal of the appeal would not result in a violation of their rights under Article 8 or Article 1 of the First Protocol.

15. I am also mindful of Article 3(1) of the United Nations Convention on the Rights of the Child. However, the interests of any children likely to be affected would align with those of their parents.

Enforcement Appeal Ground (f)

16. I turn now to the enforcement notice appeal under ground (f), which is that the steps required to comply with the requirements of the notice are excessive and lesser steps would overcome the objections. The Appellant argues that the modifications put forward in the planning application would adequately overcome the harm to neighbours' residential amenity and that the requirements of the enforcement notice should be amended to allow for these modifications rather than complete demolition of the property.

17. I have considered that proposal above and concluded that it would not overcome the harm in question. It is possible that some lesser step might be acceptable but no other suggestions have been made. Thus the appeal under ground (f) is unsuccessful.

Enforcement Appeal Ground (g)

18. Finally, I consider the appeal under ground (g), which is that the time given to comply with the notice is too short. The Appellant says that 12 months is too short to give the occupying family time to find alternative accommodation and for an alternative scheme to be considered. The Appellant has already made 2 attempts to find an acceptable alternative scheme, and I do not consider the possibility of a further attempt warrants extension of the period for compliance. The appeal property was built over 2 years ago, and further extension of the compliance period would prolong the unacceptably harmful effects caused to the living conditions of the neighbouring residents in Gelli Aur.

19. The owner/occupiers of the appeal property, Mr and Mrs Mainwaring and their family, are innocent parties in this dispute. However, even allowing for that, I consider the 12 months allowed is sufficient for them to find alternative accommodation as well as for the requirements of the notice to be met.

20. My conclusion is that the 12 months period for compliance is adequate, and the appeal under ground (g) is unsuccessful.

Overall Conclusions

21. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application and I shall dismiss the appeal against refusal of planning permission.

Clive Nield

Inspector