



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 18/09/19

gan Richard E. Jenkins BA (Hons) MSc
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 25.10.2019

Appeal Decision

Site visit made on 18/09/19

by Richard E. Jenkins BA (Hons) MSc
MRTPI

an Inspector appointed by the Welsh Ministers

Date: 25.10.2019

Appeal Ref: APP/B6855/C/19/3233140

Site address: Land at 86 Caemawr Road, Morrison, Swansea, SA6 7EA

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 Mrs D Hurlow against an enforcement notice issued by City and County of Swansea Council.
 - The enforcement notice, numbered ENF2018/0285, was issued on 14 June 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a boundary fence along the boundary with No.84 Caemawr Road, decking and a gazebo.
 - The requirements of the notice are to i) Cease the use of the decking; ii) Remove the decking and gazebo; iii) Remove the fence as indicated on the attached plan marked in blue; iv) Plant a replacement privet hedge (*Ligustrum ovalifolium*) along the boundary with 84 Caemawr Road between the existing hedge and existing boundary fence. The hedge should be 120cm to 150cm specimens (5 litre pots) planted in two staggered rows at 225mm apart at 450mm centres (5 plants per linear metre).
 - The period for compliance with the requirements is: i) one day beginning with the date this notice takes effect; ii) three months beginning with the day on which this notice takes effect; iii) three months beginning with the day on which this notice takes effect; iv) three months beginning with the day on which this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Town and Country Planning Act 1990 as amended.
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Decision

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.

Procedural Matter

2. The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Act. I shall confine my reasoning to such matters.

Reasons

The Appeal under Ground (b)

3. An appeal under Section 174(2)(b) of the Act is that the breach of planning control alleged in the Notice has not occurred as a matter of fact. As set out above, the
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breach of planning control alleged in this case is, without planning permission, the erection of a boundary fence along the boundary with No.84 Caemawr Road, decking and a gazebo. I was able to observe the presence of such structures at the time of my site inspection and I have not been provided with any evidence to indicate that such structures benefit from planning permission. It therefore follows that the breach of planning control has occurred as a matter of fact and that the appeal under ground (b) must fail.

The Appeal under Ground (a) – The Deemed Planning Application

4. The appeal under ground (a) is that planning permission should be granted for what is alleged in the Notice. Planning permission is therefore sought in this case for the retention of the boundary fence, the decking and gazebo. The Local Planning Authority (LPA) objects to the proposed development on the basis that it would cause material harm to the living conditions of the occupiers of No.84 Caemawr Road, with particular reference to privacy, outlook and levels of natural light¹.
5. It was clear at the time of my site inspection that, by virtue of its raised position, the decking would increase opportunities for overlooking of the rear garden area and rear habitable room windows of No.84. Indeed, when considered alongside the prevailing ground levels, which mean that the appeal property is at a higher level than the adjacent No.84, I consider that such increased opportunities for overlooking would be detrimental to the living conditions of the occupiers of that property. There is no doubt that such overlooking impacts were satisfactorily mitigated by the fencing referred within the alleged breach at the time of my site visit. However, by reason of its siting on top of the raised decked area, and therefore at a significantly higher ground level than that at No.84, that fencing in itself creates significant overbearing and oppressive impacts upon the occupiers of No.84. Such impacts are further exacerbated by the presence of the gazebo which, despite incorporating an open form and shallow pitched roof, projects above the aforementioned boundary fence.
6. Both the Council and the occupier of No.84 contend that the development also creates overshadowing impacts. However, having regard to the siting of the development relative to the habitable room windows of No.84, the extent of the overall garden area affected and the fact that any such loss of light would be restricted to limited periods of time during the day, I do not consider that the loss of light experienced at No.84 would cause material harm to the living conditions of the occupiers of that property. Nonetheless, such a finding does not lessen the harm identified above. Indeed, for the aforementioned reasons, I consider that the development causes material harm to the living conditions of the occupiers of No.84, by reason of loss of privacy and outlook. The development therefore conflicts with the general thrust of Policy PS2 of the adopted City and County of Swansea Local Development Plan (Adopted 2019) (LDP). For these reasons, and having considered all matters raised, I conclude that the appeal under ground (a) must also fail.

Overall Conclusions

7. Based on the foregoing analysis, I conclude that the appeal should be dismissed and the enforcement notice upheld. Planning permission should be refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended. In coming to this conclusion, I have considered where relevant the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-

¹ As set out in Section 4: '*Reasons for Issuing the Notice*' of the Enforcement Notice

Being of Future Generations (Wales) Act 2015 (WBFG Act). I have taken into account the ways of working set out at section 5 of the WBFG Act and consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives, as required by section 8 of the WBFG Act.

Richard E. Jenkins

INSPECTOR