
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 07/01/20

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

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 14.02.2020

Appeal Decision

Site visit made on 07/01/20

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

an Inspector appointed by the Welsh Ministers

Date: 14.02.2020

Appeal Ref: APP/B6855/C/19/3237438

Site address: Land at 27 Uplands Crescent (known as "The Bookshop"), Uplands, Swansea, SA2 ONX

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 Sililo Martens against an enforcement notice issued by the City and County of Swansea Council.
 - The enforcement notice, numbered ENF2019/0325, was issued on 30 August 2019.
 - The breach of planning control as alleged in the notice is, without planning permission, the construction of a raised timber terrace with surrounding fencing, metal support structures and vehicle above an existing flat roof structure at the rear of the property.
 - The requirements of the notice are to: (i) permanently remove the raised timber terrace, surrounding fencing, metal support structures and vehicle from the Land; and (ii) remove all associated materials and restore the flat roof to its condition prior to the works specified in the breach taking place.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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.
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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.

Ground (a) Appeal and Deemed Application for Planning Permission

2. The main issues to be considered for the ground (a) appeal are the visual impact of the timber terrace and its effects on the amenity of nearby residential properties.
 3. The decking structure has been constructed over part of a flat roofed area at the rear of the appeal premises and is surrounded on 3 sides by a 2 metres high timber fence which has Perspex windows in its rear elevation. It is in an elevated position readily visible from the rear access lane and from properties to the rear on Eaton Crescent.
 4. Although I agree with the Appellant that the rear access lane is not particularly attractive in appearance and that the properties backing on to it have a wide range of
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rear extensions and rear yard areas, the timber terrace stands out as a prominent structure which is out of place in its surroundings. Its timber and Perspex wall materials conflict with the traditional materials that prevail in this area adjoining the rear lane, the structure is poorly designed with no apparent consideration having been given to its location and setting, and its elevated position serves to emphasise its incongruity. I consider it to be unacceptably harmful to the character and appearance of the area and contrary to Policy PS 2 (Place Making and Place Management) of the adopted Swansea Local Development Plan.

5. The Appellant has drawn my attention to several other outside terrace areas at the rear of other premises nearby. However, these are far less intrusive than the appeal development due to lower levels, more appropriate materials or more sympathetic design than the timber terrace in question.
6. The harmful visual impact of the terrace is exacerbated by its location within, albeit on the edge of, the Ffynone and Uplands Conservation Area. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires all development in a Conservation Area to preserve or enhance its character or appearance, and the terrace development manifestly fails to do that. The Appellant argues that, as the terrace is not visible from the main street, it does not have a detrimental effect on the character or appearance of the Conservation Area, and I agree that its impact is far less than if it had been constructed on the front of the appeal property. However, its prominent and stark nature still fails to meet the requirements of Section 72 of the Act, and I conclude that it is detrimental to the character and appearance of the Conservation Area. In this regard the development also conflicts with policies HC 1 (Historic and Cultural Environment) and HC 2 (Preservation or Enhancement of Buildings and Features) of the adopted Local Development Plan.
7. Turning to the effects on the amenity of nearby residential properties, there are first floor flats at the premises adjoining the appeal site and a row of houses beyond the rear access lane. Letters of objection have shown that there is a perceived feeling that the rear gardens of some of the houses are overlooked from an elevated position close to those gardens, and I consider that to be a reasonable perception. The open-air nature of the terrace also has the potential to give rise to unacceptable levels of noise and disturbance late at night close to these residential properties. In addition, one of the tall fences is close to a rear window of the adjoining property which the Council says is in residential use on the first floor. If that is so, then the fence is having an overbearing impact on the outlook from that window.
8. The Appellant says the terrace and fences around it were constructed with the aim of mitigating possible effects on nearby residential properties. However, I do not consider it has successfully achieved that. My conclusion is that the terrace and its use for drinking outside at unsociable hours is unacceptably harmful to the amenity of nearby residential properties, contrary to policies PS 2 (Place Making and Place Management), RP 2 (Noise Pollution) and RP 3 (Air and Light Pollution) of the adopted Local Development Plan.
9. Finally, the Appellant says that outside seating areas are an important feature of bar premises and that the loss of the terrace would affect the viability of his business. That may be so. However, I consider any such benefit to be far outweighed by the harm described above. The Appellant has also made claims about the fallback position involving possible use of the flat roof instead of the timber terrace. However, that fallback is disputed by the Council, and I have insufficient evidence to justify taking it into account.

10. I have taken into account the possibility of using planning conditions to make the development acceptable, including those suggested by the Appellant. However, I do not consider they would overcome the harm caused.
11. Overall, my conclusion is that the timber terrace is unacceptably harmful to the character and appearance of the area, particularly bearing in mind its location within a Conservation Area, and to the amenity of nearby residential properties, and it conflicts with Local Development Plan policies. For the reasons given above I conclude that the appeal under ground (a) should not succeed and that the deemed planning application should be refused.

Ground (g) Appeal

12. The issue for a ground (g) appeal is whether or not the time given to comply with the notice falls short of what should reasonably be allowed.
13. The enforcement notice specifies 3 months for compliance. However, the Appellant asks for 6-9 months to be allowed in order to avoid implications for existing bookings and minimise effects on his business operations, though he has provided no details to support this argument.
14. On balance, I consider 3 months to be sufficient time for the requirements of the notice to be carried out and, in view of the substantial harm caused by continued retention of the terrace, my conclusion is that it would not be reasonable to allow any longer period even if it would be of benefit to the business. The appeal under ground (g) is unsuccessful.

Overall Conclusions

15. In reaching my conclusions, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objectives of building healthier and resilient communities and better environments.

Clive Nield

Inspector