



Appeal Decisions

by H W Jones BA (Hons) BTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 23/02/2023

Appeal reference: CAS-02021-G5L2F4

Site address: 3 Clevis Crescent, Newton, Porthcawl, CF36 5NY

Appeal A reference: CAS-02021-G5L2F4

Site address: 3 Clevis Crescent, Newton, Porthcawl, CF36 5NY

- 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 G Lewis against an enforcement notice issued by Bridgend County Borough Council.
 - The enforcement notice, numbered ENF/414/21/ACK, was issued on 25 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a garden shed, timber structure and boundary fence.
 - The requirements of the notice are:
 - (a) Remove the timber garden shed located in front of the property;
 - (b) Remove the three-sided timber structure located in front of the property;
 - (c) Reduce the boundary fence in the front garden area located on the southern boundary with 4 Clevis Crescent to 1m in height for a distance of 2m from the back of the pavement as shown in blue on attached Plan B;
 - (d) Remove all materials associated with steps (a) – (c) above from the land.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - A site visit was made on 20 December 2022.
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Appeal B reference: CAS-02023-V5Z2N6

Site address: 3 Clevis Crescent, Newton, Porthcawl, CF36 5NY

- 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 Cormac Lewis against the decision of Bridgend County Borough Council.

- The application (ref: P/22/110/FUL), dated 15 February 2022, was refused by notice dated 12 May 2022.
 - The development is described as: retrospective planning application for works to the front garden area following a letter from [the Council] dated 10th February 2022 reference ENF/414/21/ACK. Works include removal of existing trees and relocation of existing shed, plus the addition of 2.0m high cedar fencing and covered areas, new raised lawn area with buried 3000 litre water storage tank which will be used for irrigation purposes, plus new landscaped areas to soften and provide coverage to new fenced and lawn areas.
 - A site visit was made on 20 December 2022.
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Decisions

Appeal A

1. The appeal is allowed on ground (g), and it is directed that the enforcement notice is:
 - (i) corrected by the deletion of “(shown edged red on the attached Plan A)” in section 2, The Land Affected and by the deletion of “as shown in blue on attached Plan B” in requirement 5 (c); and
 - (ii) varied by the deletion of “2 months” and the substitution of “4 months” as the period for compliance.
2. Subject to these corrections and 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 1990 Act as amended.

Appeal B

3. The appeal is dismissed insofar as it relates to the existing timber garden shed, three-sided timber structure and boundary fence, and the proposed car port. The appeal is allowed only insofar as it relates to the new raised lawn area with buried 3000 litre water storage tank and planning permission is granted for the new raised lawn area with buried 3000 litre water storage tank at 3 Clevis Crescent, Newton, Porthcawl, CF36 5NY in accordance with the terms of the application, (ref: P/22/110/FUL), dated 15 February 2022.

Preliminary Matter.

4. The description of development set out in the above banner heading for Appeal B is taken from the planning application form. It does not appear that the appellant has agreed the more concise amended description which the Council has used in its decision notice. For reasons of clarity, in my decision I have referred to specific elements which formed part of the application.

The Notice

5. In describing the land affected the enforcement notice sets out the site address as it appears in the above banner heading. However, it also includes the following: “(shown edged red on the attached Plan A)”. The main parties agree that Plan A incorrectly identifies a neighbouring property. It is also clear that Plan B incorrectly positions the blue line identified in requirement (c).

6. It is clear that the appellant has not been misled by these errors; the site address is sufficient to identify the land the subject of the notice and reference to Plan B is not necessary to understand the extent of requirement (c). In the circumstances I am satisfied that I can correct the notice by deleting the references to the plans without causing injustice to any party, and shall do so to avoid any potential confusion in the future. I shall use my powers to correct the notice accordingly.
7. The appellant points out that the subject fencing is not on the boundary and that such reference in the notice is incorrect. I am satisfied that the fence is sufficiently close to the boundary that the description does not require correction.

Appeal A, ground (a), and Appeal B

8. Appeal B seeks retrospective planning permission for the same works the subject of the deemed planning application that falls to be considered under Appeal A, as such I shall deal with them together. Although not specifically mentioned in the appellant's description, the site layout plan refers to a car port that has not yet been erected and which would be positioned between the shelter and the shed, as such it forms part of my assessment of Appeal B.
9. The appeal B scheme also includes the raising of the lawn and installation of an underground storage tank which has been undertaken between the house and the structures the subject of the enforcement notice. No concerns have been raised to these elements. As there is no reason to withhold approval, I shall grant retrospective permission for those works without making further reference to them in my assessment of the planning merits.

Main Issue

10. The main issue in both appeals is the effect of the development on the character and appearance of the surrounding area.

Reasons

11. The appeal property lies towards the middle of a short row of two-storey, semi-detached dwellings that are set back by front gardens from an access road which runs parallel to Bridgend Road, a main road into the centre of Porthcawl. The alignment of the highway and the elevated position of the row of houses means that they are readily visible to passers-by, particularly those travelling towards the centre.
12. Each pair of dwellings in the row differ from the other pairs in terms of their detailing. However, the broad uniformity of their set back from the highway and their general form including distinctive hipped roofs combine to provide a pleasing sense of architectural cohesion. The generous length of the front gardens, the prominence of soft landscaping and the roadside stone walls contribute to the attractive composition of the row.
13. The erection of the tall vertically boarded timber panelling along 3 sides of the timber shelter which is located very close to the front boundary of the property has created a harsh and dominant feature. I appreciate that there is a tall close boarded fence along the frontage of nearby No. 5 Clevis Crescent with a timber structure behind it. The Council explain that these works are unauthorised and are subject to ongoing enforcement investigation. In between these high fences, No. 4 has a timber panelled fence along its frontage but at a markedly lower level; the Council explains that it has not been granted planning permission but is lawful because of the passage of time. These other fences are incongruous features in the context of the attractive character I have described. The subject enclosure significantly contributes to the creation of a fortress-like appearance, at odds with the otherwise more open relationship of the frontages of this row of properties, and many others in the vicinity, to the public realm.

14. The garden shed sits closer to the front elevation of the dwelling. It is screened by the fence and shelter to some degree but is prominent when viewed across the wide driveway. It detracts from the principal elevation of the house and together with the other structures means that the front garden is dominated by buildings and other hard surfaces, in stark contrast to most of its neighbours. Both the shelter and the shed appear as incongruous within a front garden; as an objector points out such structures are usually located within the more secluded rear gardens of dwellings. The addition of the proposed car port would exacerbate this impact.
15. I have taken into account the potential to impose planning conditions that would assist in reducing the impact of the development, including, as suggested by the appellant, the application of colour and landscape planting. The extent of potential mitigation would be modest and does not alter my findings on the unacceptability of its local impact.
16. Neither scheme performs well against the detailed guidance in Note 23 of the Council's Supplementary Planning Guidance Note 02: Householder Development. It advises that garages and outbuildings should complement the existing house, should not detrimentally affect the space about the house and should not normally be in front of the house, nor should they dominate the existing and surrounding properties.
17. On the main issue I find that the work, which has included the loss a prominent roadside tree and some other vegetation, has had a marked and detrimental impact on the appearance of this front garden which is harmful to the character and appearance of the area. The scheme runs counter to the aim of Policy SP2 of the Local Development Plan that development should contribute to creating high quality and attractive places by respecting and enhancing local character and distinctiveness.
18. For reasons I have explained, I find the boundary fence harmful to its surroundings. In doing so I acknowledge that compliance with the requirements of the enforcement notice will mean that in an amended form the fence can remain. It is therefore not necessary for me to consider the implications of any permitted development rights for a fence as a potential fallback option.

Other Matters

19. The appellant points out that the timber shed has been on the site for a number of years and has only been re-sited. This does not alter my findings on the impact of the works, which include the effect of the re-positioned shed on its environs.
20. The appellants emphasise that they are committed to following sustainable life-style principles. Whilst this is laudable, particularly in light of the Government's clear commitment to sustainability, most of the points raised in this respect are not relevant to my consideration of the planning merits of this case. I note that the shelter is used to store and charge electric bicycles. However, the associated sustainable transport benefits do not justify permitting the extensive and harmful works.
21. The appellants explain that access to the rear garden is through the house which would be less convenient for the occupiers in terms of locating outbuildings for storage. I also note that the rear garden is used as their main private and safe outdoor amenity area. Such arrangements are commonplace and the personal preferences of the occupiers in this case do not justify the retention of this harmful development within a prominent front garden. Moreover, the appellants have chosen to erect a side extension to the house blocking a pathway that previously provided outdoor access to the rear garden.
22. I have noted that 2 neighbours support the scheme whereas others, and the Town Council, object primarily raising concerns already covered under the main issue.

23. It is not clear to me whether the tree that was removed to facilitate the works was protected by the Tree Preservation Order which covers the front gardens of the appeal site and its neighbours. As the Council states this is, in any event, a matter that it would need to pursue as a separate matter.
24. The harm that I have identified in relation to the main issue constitutes a significant planning impact which outweighs the benefits and other considerations that have been identified by the appellant. I shall therefore dismiss the ground (a) appeal and refuse the deemed planning application, and shall also dismiss Appeal B other than insofar as it relates to the storage tank and raised lawn which I shall allow. Given that the permission is in retrospect the standard time commencement condition and one controlling materials are not necessary. As the scheme provides a lawn area I am satisfied that it provides adequate biodiversity enhancement opportunity without the need in this instance for the condition suggested by the Council.
25. In reaching my decision on the deemed planning application, 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 objective to make our cities, towns and villages even better places in which to live and work.

Ground (f) Appeal

26. This ground of appeal is that the requirements of the notice are excessive and that lesser steps would overcome the objections. The appellant contends that compliance with requirement (c) would mean that the remaining fence would provide effective screening for the shelter and shed, such that there should be no requirement to secure their removal.
27. For reasons already explained, I have found both structures to be harmful in the context of the existing screening provided by the fence. It follows that the retention of a reduced fence would not justify deleting requirements (a) and (b) given that such a variation to the notice would undermine its purpose which is to remedy the harm to the visual amenity of the area.
28. The appellant further argues that as the notice only requires a 2m section of the side fence to be reduced in height, it would be preferable for the fence to be retained as it presently stands in order that the Council can control its colour and landscape screening. I have already explained that such mitigation would have little effect on its visual impact. As the reduction in part of its height would assist in reducing its prominence, there is no justification for altering the requirement relating to the fence.
29. I am satisfied that there are no lesser steps that could be reasonably imposed that would satisfy the reason for serving the notice. As such this ground of appeal fails.

Ground (g) Appeal

30. The appellant explains that 2 months is not a sufficient period to reorganise their storage requirements and suggests that a period of at least 4 months would be more appropriate. The Council has confirmed that it is not opposed to extending the time period as suggested. I acknowledge the impact of complying with the notice would have on the domestic arrangements of the appellants and their family and shall therefore extend the period by a further 2 months. Thus the ground (g) appeal succeeds and I shall vary the notice accordingly.

Conclusions

31. For the above reasons and having regard to all other matters raised, I conclude in relation to Appeal A that the notice should be corrected to remove references to the plans. I also find that the period for compliance should be extended and shall vary the enforcement notice accordingly, prior to upholding it. I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. I shall dismiss Appeal B in relation to all but the lawn and water tank, which I shall allow without any planning conditions.

H W Jones

INSPECTOR