



Appeal Decision

by P J Davies BSc (Hons) MA MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 12.06.2023

Appeal reference: CAS-02211-R3N9R7

Site address: Gwarallt Barn, Brechfa, Carmarthen SA32 7BW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Leslie Cross against the decision of Carmarthenshire County Council
 - The application Ref PL/04211 was refused by notice dated 29 July 2022.
 - The application sought planning permission for conversion of 2 No barns to 2 No residential dwellings with associated parking and demolition of 1 No lean-to extension and 1 no agricultural outbuilding without complying with conditions attached to planning permission Ref E/21965, dated 8 February 2010.
 - The conditions in dispute are: No 2 which states that: 'The development hereby permitted shall be carried out strictly in accordance with the 1:100, 1:500 and 1:1250 scale plans received on 30 October 2009, and the amended 1:500 scale plan received on 11 January 2010, unless amended by any following conditions'; and No 3 which states that 'All windows and doors shall all be installed as painted or stained timber joinery'.
 - The reason given for the conditions is 'In the interests of visual amenity (Policy GDC 17 of the UDP).
 - A site visit was made on 24 April 2023.
-

Decision

1. The appeal is allowed and planning permission is granted for the conversion of 2 No barns to 2 No residential dwellings with associated parking and demolition of 1 No lean-to extension and 1 no agricultural outbuilding at Gwarallt Barn, Brechfa, Carmarthen SA32 7BW in accordance with the application Ref PL/04211 29 July 2022, without compliance with condition number 3 previously imposed on planning Ref E/21965, dated 8 February 2010 but subject to the conditions set out in the attached schedule.

Main Issue

2. This is whether the disputed conditions are effective and capable of being enforced.

Reasons

3. Welsh Government Circular 016/2014 'The Use of Planning Conditions for Development Management' ('the Circular') sets out the criteria for the validity of planning conditions.

Among other things it requires conditions to be enforceable, ensuring that they are effective. When drafting conditions, careful consideration should be given to how compliance with a condition could be achieved if it were to be breached. A condition that requires an action to be carried out should, where desirable, specify the retention of such actions, otherwise subsequent changes may not be able to be reversed through enforcement action. A condition should not be imposed if it cannot be enforced.

4. In this case, the reason for the disputed condition 3 is described in the decision notice as 'In the interests of visual amenity'. Given the rural setting of the barn and its traditional appearance and form, I do not doubt the intention of the condition to safeguard these qualities in the interests of character and appearance. However, the condition does not contain a retention clause requiring the windows and doors to be retained in stained or painted timber joinery. For the barn the subject of this appeal (Barn A), the timber joinery has been installed, albeit there are two UPVC doors which appear to be replacements. Nonetheless, in the absence of a retention clause, the replacement of timber windows and doors with wood effect UPVC cannot be enforced against. In terms of the adjoining barn (Barn B), which is also subject to the disputed conditions, UPVC windows and doors have already been installed. Although the Council refused planning permission for their retention in 2018 (Ref E/36889), no enforcement action has been undertaken. In any event, and similarly to Barn A, even if timber joinery were to be reinstalled, the condition cannot enforce against their subsequent replacement at a later date. I have considered whether the condition could be redrafted to meet the test of enforceability. However, whatever the outcome of this appeal, the original permission remains extant and unaltered, along with the conditions attached to it. Amending the condition would therefore serve no purpose. In the above circumstances, Condition 3 fails to meet the tests of the Circular and should be removed.
5. In terms of condition 2, the development has been carried out, and both barn conversions appear to have been occupied for some time. The Council considers that the windows and door in the front elevation of the dwelling do not reflect that which was approved, although it is not clear which barn is being referred to and no further details are provided. Even so, I cannot be certain that condition 2 has been discharged and I shall therefore reinstate it. However, having regard to the appellant's intentions to install UPVC I note that the approved plans do not specify the materials or finish of the windows and doors. Whilst condition 2 is therefore capable of having effect in some respects, it is unlikely to be effective in terms of enforcing a specific material or finish to the windows and doors.
6. As I am granting a new planning permission, I have had regard to the other conditions originally imposed. The Development Management Manual clearly states that decision notices for the grant of planning permission under section 73 should repeat the relevant conditions (which are considered necessary) from the original decision notice. The Council confirms that conditions 4 and 8 no longer remain relevant. Like condition 3, conditions 5 and 6 fail to meet the tests of the Circular because they do not specify the retention of the actions required. These should therefore be removed. Condition 7 removes permitted development rights for development within the curtilage of the dwelling and remains relevant and necessary to safeguard character and appearance. Conditions 9, 10 and 11 relate to the provision of the access. The Council has provided no information as to whether condition 9 has been discharged, however conditions 10 and 11 remain relevant and necessary in the interests of highway safety. As I have no information as to the status of condition 9, I shall reimpose it, along with condition 2. In the event that either of these conditions have been discharged, that is a matter which can be addressed by the parties.

7. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition 3, and restating those conditions as set out above.

P J Davies

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the 1:100, 1:500 and 1:1250 scale plans, received on 30 October 2009, and the amended 1:1500 scale plan received on 11 January 2010.

Reason: To ensure compliance with the approved plans.

2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (or any Order revoking or re-enacting that Order with or without modification), no development within Schedule 2, Part 1, Classes A,B,C,D,E, G, shall be carried out within the curtilage of the dwelling hereby approved (other than those expressly authorised by this permission) without the prior written permission of the local planning authority.

Reason: In the interests of character and appearance (Policies GP1 and H5 of the Carmarthenshire Local Development Plan).

3. The existing means of vehicular access serving Gwarallt shall be permanently stopped up, and the public highway reinstated to the written approval of the local planning authority, prior to the new means of vehicular access herein approved, being brought into use, as shown on the amended 1:500 scale plan, received on 11 January 2010.

Reason: In the interests of highway safety (Policy GP1 of the Carmarthenshire Local Development Plan).

4. There shall at no time be any growth or obstruction to visibility over 0.6 metres above the adjacent carriageway crown, over the site's whole County Road frontage within 2.4 metres of the near edge of the carriageway.

Reason: In the interests of highway safety (Policy GP1 of the Carmarthenshire Local Development Plan).

5. The access, visibility splays and turning areas required, shall be wholly provided prior to any part of the development being brought into use, and thereafter shall be retained unobstructed in perpetuity. In particular, no part of the access, visibility splays or turning area, is to be obstructed by non-motorised vehicles.

Reason: In the interests of highway safety (Policy GP1 of the Carmarthenshire Local Development Plan).