



Appeal Decision

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 03.10.2023

Appeal reference: CAS-02266-M7C2M1

Site address: Leeward, Lôn Rhoslyn, Abersoch, Pwllheli LL53 7BB

- 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 Mark Keeley against the decision of Gwynedd Council.
 - The application Ref C22/0641/39/AC, dated 7 July 2022, was refused in part by notice dated 26 August 2022.
 - The application sought planning permission for demolition of existing dwelling and new replacement dwelling without complying with a condition attached to planning permission Ref C22/0263/39/LL, dated 17 June 2022.
 - The condition in dispute is No 10 which states that: "Before the residential use of the development hereby permitted commences, the two first floor bathroom windows on the side elevation as well as the first floor dressing room and en-suite windows on the rear elevation shall be fitted with obscured glazing. Details shall be submitted to and agreed in writing by the local planning authority; these four windows must only include top hung openings and any part of the windows that are less than 1.7m above the floor of the room in which it is installed shall be non-opening. The windows shall be permanently retained in that condition thereafter".
 - The reason given for the condition is: "To protect the residential amenity of neighbouring occupiers in accordance with policy PCYFF 2".
 - A site visit was made on 20 June 2023.
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Decision

1. The appeal is allowed, and planning permission is granted for demolition of existing dwelling and new replacement dwelling at Leeward, Lôn Rhoslyn, Abersoch, Pwllheli LL53 7BB in accordance with the application Ref C22/0641/39/AC dated 7 July 2022 without compliance with condition number 10 previously imposed on planning permission Ref C22/0263/39/LL dated 17 June 2022, and the plans submitted with it, subject to the conditions set out in the schedule of conditions to the decision.

Procedural Matters

2. The Council refused in part and allowed in part application Ref C22/0641/39/AC to not comply with one of the planning conditions on the original planning permission for the development Ref C22/0263/39/LL. This was granted in June 2022 for the demolition of existing dwelling and new replacement dwelling. This appeal is against application Ref C22/0641/39/AC which is a part refusal and a split decision under Section 73 of the Act as amended.
3. However, the Council also issued planning permission Ref C22/0263/39/LL a second time noted as Version 2 and was dated 30 August 2022. This decision dated August 2022 is the same planning permission and conditions as the original issued decision in June 2022. For the purposes of the Section 73 appeal this second permission can be ignored.
4. The appellant's submission is correct in its interpretation of Section 73. From my reading the appellant is seeking to appeal against Ref C22/0641/39/AC which relates back to the original application Ref C22/0263/39/LL which was granted on 17 June 2022. Although there is a right of appeal against the second version of Ref C22/0263/39/LL dated 30 August 2022 it serves little purpose in doing so, as the appellant can choose which planning permission is being carried out. As noted above as this appeal is allowed this would in turn issue another planning permission for the site without the disputed condition but repeating all other conditions which were not disputed that are still subsisting and capable of taking effect.
5. Planning permission Ref C22/0641/39/AC permitted a variation of condition 10, only to the extent that the details of the windows need not be submitted for approval in writing to the local planning authority. The Council still require all four windows to be obscured glazed also controlling the way these open if they were below 1.7m when measured from the floor of the room, where they are installed.
6. The dispute arises in relation to one rear elevation window which accommodates a dressing room on the submitted plans. The appellant seeks that this window is not obscured glazed at all, and that reference to this window be omitted in the disputed condition.

Main Issue

7. The main issue is the effect of varying the condition would have on the living conditions of nearby residents in relation to privacy. As indicated this proposed variation relates to one dressing room window.

Reasons

8. Leeward has been granted planning permission for a four bedroomed two-storey dwelling which is under construction. The bedroom accommodation would be at first floor level with the lounge, kitchen and dining rooms, snug, and utility at ground floor level. This arrangement differs from the previously dismissed scheme considered at appeal in 2021 under reference APP/Q6810/A/21/3279835. That proposal was for a dwelling over three floors with the kitchen, lounge, and dining areas on the top floor with large-glazed areas leading to a balcony. The approved scheme is significantly different to that which was previously dismissed at appeal and is not comparable in relation to the impact on privacy.
9. Leeward which is in the process of being built is orientated such that it is angled to the road. The relationship to North Landing is also angled, it is not a direct line of view, as would be the case with buildings facing one and another on a horizontal plane. North Landing and its neighbour Harbour Cottage is also on a lower level than Leeward. In

relation to planning principles the site is within the settlement and is an infill plot within a residential area that has the benefit of planning permission.

10. I viewed the site from the disputed window opening in question which was being constructed at the time of my visit. I could appreciate the relationship from the level of the window to North Landing, and the established landscaping which was already in place. The view is angled it is not direct. North Landing is orientated parallel to its rear boundary whilst the site at Leeward is triangular, and Leeward would predominantly face at an angle to North Landing. The relationship is not directly facing each other. Whilst the rear gable feature at North Landing is predominantly glazed and at a lower level the separation distance is noted as 26 m in the appellant's submission. Having assessed the submitted plans and viewed the site and surrounding area, I consider this distance is broadly accurate to the circumstances of this case. Back-to-back direct and parallel orientated dwellings should normally have a separation distance of 21 m, and this is widely accepted in normal development management decisions. This situation is different in that the separation distance is greater than 21 m and is not direct and parallel.
11. Even if I were to consider the Wrexham Council separation distance which accounts for slope, the proposal would accord with the separation distance permitted there, as I agree with the appellant's calculation on floor level differences between Leeward and North Landing. However, I cannot use guidance from another Authority to use it to apply in this Authority's area. Gwynedd has no separation guidance to apply, and so there is no measure that can apply, it is a matter of planning judgement relevant to the circumstances of the case having seen it from a site inspection. I therefore discount the interested party's suggestion that another's Authority's guidance should be used in Gwynedd.
12. I also discount the appeal decisions from Reading and Stratford from interested parties. As noted in the appellant's response these are different sites with very different relationship characteristics to the appeal development. I agree with the appellant that in the Reading case the proposed dwelling would have been within 2 m of the adjoining boundary. In the Stratford case there was an adopted standard to be applied, whereas in this case this is absent. These appeal cases can be differentiated from the appeal development.
13. Further mitigating any impact on privacy, in addition to that mentioned on distance, slope and orientation, there is considerable established landscaping on the boundaries of the site. This dense shrubbery conceals the view of the rear outward gable projection of North Landing and the dwelling Harbour Cottage from the dressing room window of Leeward.
14. I find the submission to remove the obscure glazing from the dressing room window acceptable and in line with Policy PCYFF 2 of the Anglesey and Gwynedd Joint Local Development Plan 2011 - 2026. I also find that the already conceded revision by the Council to not require details to be submitted is also acceptable since sufficient control exists in the appellant's suggested wording of the condition.
15. There is a suggestion from interested parties that the dressing room could be changed to a bedroom at some later date. That is entirely possible and acceptable in terms of the issue of privacy. Several references are made to the previous Inspector's decision, but this assessed an entirely different proposal to the appeal development. I have considered the concern about privacy and the perception of being overlooked. I have also considered other issues being raised in relation to the domineering and oppressive nature of the development. However, planning permission has been granted and will exist unfettered whatever the outcome of this appeal. I find no issue with overlooking in this case to warrant refusal and this is assessed from my site inspection. Any perceived impact on

privacy should not result in an adverse effect if in real terms the impact is acceptable and would not diminish living conditions. The issue raised in relation to the extent of obscure glazing is not a factor, given my conclusion on the issue. All other matters raised by interested parties have been considered, but none outweigh my conclusion on the main determining issue in this appeal.

16. I conclude that varying the condition would not harm the living conditions of nearby residents in relation to privacy. I find that the disputed condition is unnecessary, irrelevant to the planning circumstances, and irrelevant to the development permitted and not reasonable in other respects, having regard to the Welsh Government Circular 016/2014 The Use of Planning Conditions for Development Management.

Conditions

17. 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. As I have no information before me about the status of the other conditions imposed on the original decision notice, I shall impose all those again. If some have been discharged, that is a matter which can be addressed by the parties. I shall delete reference to the five-year commencement condition since development has been instigated. I shall revise the plans condition accordingly. I have imposed the appellant's suggested wording for the disputed condition. This now appears as condition No. 9 in the attached schedule. All reasons for the conditions are set out below.

Conclusions

18. In reaching my decision, 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.
19. For the reasons given above, I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition and imposing a new condition as stated, along with removing the commencement of development condition and substituting the plans condition for another and restating those undisputed conditions that are still subsisting and capable of taking effect.

Iwan Lloyd

INSPECTOR

SCHEDULE OF CONDITIONS in relation to Appeal Ref: CAS-02266-M7C2M1

- 1) The development shall be carried out in accordance with the following approved plans and documents: PL-01 Revision F, PL-12 Revision D, PL-13 Revision B.
Reason: To ensure the development is carried out in accordance with the approved plans submitted with the application
- 2) The roof of the building shall be covered with new natural Welsh slates, the colour of which shall be agreed in writing by the Local Planning Authority or with slates of equivalent colour, texture and weathering characteristic as may be approved in writing by the Local Planning Authority.

Reason: In the interests of visual amenity.

- 3) The external finish of the building shall be as agreed in writing with the Local Planning Authority before any work is commenced in connection with this approval.

Reason: In the interests of visual amenity.

- 4) No development or site clearance shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping.

Reason: In the interests of the environment and visual amenity.

- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of the environment and visual amenity.

- 6) No development or phase of development, including demolition works/site clearance, shall commence until a site wide Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority. The CMP should include: • Construction methods: details of how waste generated will be managed; • General Site Management: details of the construction programme including timetable, details of site clearance; • Control of Nuisances: details of restrictions to be applied during construction including timing, duration and frequency of works; details of measures to minimise noise and vibration from activities; details of dust control measures; • Traffic Management: details of site deliveries, plant on site; • Pollution Prevention: demonstrate how relevant Guidelines for Pollution Prevention and best practice will be implemented, including details of emergency spill procedures and incident response plan. • Details of the persons and bodies responsible for activities associated with the CEMP and emergency contact details. The CMP shall be implemented as approved during the site preparation and construction phases of the development.

Reason: A CMP should be submitted to ensure necessary management measures are agreed prior to commencement of development and implemented for the protection of local residential amenities during construction.

- 7) Details of mitigation measures as outlined within Cambrian Ecology's protected species survey report dated 11/06/20 must be submitted for written approval prior to the commencement of the development hereby approved; the development must then be carried out and completed in strict accordance with the recommendation and mitigation measures as detailed within the report.

Reason: For the protection of local biodiversity.

- 8) No surface water and/or land drainage shall be allowed to connect directly or indirectly with the public sewerage network.

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment.

- 9) Before the residential use of the development hereby permitted commences, the two first floor bathroom windows on the side elevation and the first floor en-suite window on the rear elevation shall be fitted with obscured glazing. These three windows must only include top hung openings and any part of the window that is less than 1.7m

above the floor of the room in which it is installed shall be non-opening. The windows shall be permanently retained in that condition thereafter.

Reason: In the interests of the living conditions of nearby residents, in accordance with policy PCYFF 2.

- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended for Wales) (or any order revoking and re-enacting that Order with or without modification) nothing in Article 2, Schedule 2 to that Order shall operate as to permit (within the area the subject of this permission) any development referred to in classes A, B, C, D, E of Part 1 of the Second Schedule to the Order and no such development shall be carried out at any time within that area without the express grant of permission from the Local Planning Authority.

Reason: In order to conform with policy CYF 6 of the Anglesey and Gwynedd Joint Local Development Plan.

- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows/openings shall be included apart from those specifically approved by this approval.

Reason: To safeguard the amenities of the occupants of nearby properties.