



## Appeal Decision

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by R H Duggan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 13/10/2023

Appeal reference: CAS-02689-J1P2C8

Site address: Eronel, Gelli Gynore, Penllergaer, Swansea SA4 9WQ

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- 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. A. Thomas against an enforcement notice issued by the City and County of Swansea Council.
  - The enforcement notice, numbered ENF2022/0002, was issued on 23 March 2023.
  - The breach of planning control as alleged in the notice is *'Without planning permission, the erection of an outbuilding being used as residential accommodation'*.
  - The requirements of the notice are (i) *Cease the unauthorised residential use.* (ii) *Demolish the outbuilding.* (iii) *Remove all materials from the demolished outbuilding from the property to an authorised location.*
  - The period for compliance with the requirements is: *Point (i) within one day on which this notice takes effect; Points (ii) and (iii) 6 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 f) of the Town and Country Planning Act 1990 as amended.
  - A site visit was made on 2 October 2023.
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### Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

### The ground (a) appeal and deemed planning application

#### Main Issues

2. The main issues are whether the appeal building is an appropriate form of development in this location and whether it has an impact on the living conditions of the occupiers of the host property and neighbouring dwellings.

#### Reasons

3. The basis of an appeal on ground (a) against an enforcement notice is that planning permission should be granted for the development at which the notice is directed.
4. In this case, the appellants evidence claims that the building is currently being used primarily as a home office and is split into two separate office/study rooms, with a larger

'sitting area' with small work surface and sink, and that the building is also being used in connection with the appellants dog breeding business for office work/record keeping and for general storage of garden furniture. As such, it is argued that the appeal building is incidental to the enjoyment of the main dwelling which would ordinarily be allowed under Permitted Development (PD) under Class E of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

5. When an Enforcement Notice is appealed under ground a), the appellant is deemed under s177(5) of the Town and Country Planning Act 1990 to have made an application for planning permission in respect of the matters stated in the Enforcement Notice as constituting the breach of planning control. Therefore, the appellant's evidence in relation to the current use of the building is not material to the appeal on ground a) that is before me.
6. The appeal property is a detached dormer bungalow located in a row of residential properties accessed via an unmade road over common land known as Gelli Gynore. The appeal building is located within the rear garden and is of timber construction with horizontally laid treated softwood exterior boarding, uPVC windows and doors with a flat roof.
7. A Certificate of Lawful Development was issued for an outbuilding on 11 May 2021 which was deemed to be permitted development under Class E of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). The approved plans detailed a building measuring approximately 5.7m x 11.82m with a flat roof and eaves at a maximum height of 2.5m, with the internal space split into two main rooms to be used as a home office and a summerhouse/children's playroom.
8. The Council visited the appeal site on 3 February 2022 and the photographic evidence of the visit clearly show that the building constructed on the site (the appeal building) was being used for residential purposes, and the internal layout of the building contained a large living room with kitchen area, two bedrooms and a bathroom. The Council visited the site for a second time on 22 August 2022 and the photographs show that the building continued to be in residential use with the kitchen benefitting from worktops, a microwave and other kitchen electrical appliances, the living room containing sofas, television, side table, a dining table and chairs. It is clear from these photographs that the building was being lived in and in residential use contrary to the Certificate of Lawful Development. In response to a Planning Contravention Notice issued by the Council in May 2022 the appellant stated that the building was not occupied and was used as an office, and the responses within the PCN did not mention any residential use of the appeal building.
9. The appellant acknowledges that the building has been built larger than that approved by the Certificate of Lawful Development. The appeal building has external dimensions of approximately 11.20m x 6.00m, and at its highest point is some 2.66m to top of eaves (flat roof surface) and approximately 2.5m to the underside of the eaves. Therefore, the appeal building does not comply with the approved plans and is not PD.
10. The Council contends that the building is being used as an independent residential unit which is physically and functionally separated from the main dwelling. The Council is concerned that the use of the outbuilding as a residential unit would result in loss of privacy to the occupiers of the host property, and is likely to result in increased noise and general disturbance arising from the comings and goings generated by the proximity of two separate residential uses to the detriment of the occupiers of the host property and the immediate neighbouring properties.
11. During my site visit I saw that the internal arrangement of the building has indeed been changed from the layout approved by the 2021 Certificate of Lawful Development. It is

clear to me that the appeal building is internally laid out and contains all the characteristics and facilities that enables its use as an independent residential dwelling. The building is clearly separate from the main dwelling and contains accommodation that is not only capable of being used for independent residential use, but also of an extent that would be commonly found in a separate dwelling and conducive to entirely independent living for its occupants.

12. Taking account of these considerations regarding the free standing, self-contained nature of the development, the appeal building is tantamount to the creation of a new dwelling. Therefore, on the balance of probabilities the building was being used for residential purposes at the time the enforcement notice was issued. The photographic evidence produced by the Council from two previous site visits during 2022 reinforces my assessment that the appeal building has been used, and continues to be capable of being used, for residential use.
13. In my view, the use of the building as an independent residential unit within the rear garden of Eronel and close to the boundaries of neighbouring properties is an inappropriate form of development. It is likely to generate increased levels of noise and disturbance from pedestrian comings and goings in close proximity to the rear amenity space and rear habitable rooms of the host dwelling and neighbouring properties and leads to some loss of privacy for the occupiers of Eronel. Therefore, the development harms the living conditions of adjacent occupants contrary to Policy PS2 of the Adopted City and County of Swansea Local Development Plan, 2019.
14. Notwithstanding the representations of the appellants, a legal agreement in the form of a Section 106 Agreement or conditions imposed to control the use of the building would be very difficult to enforce in the long term. Therefore, a condition would not be appropriate in this instance having regard to the guidance within Circular 016/2014 'The Use of Planning Conditions for Development Management'.
15. I have taken into account all other matters raised, including the personal circumstances of the appellant and her family, but such considerations rarely outweigh the more general planning considerations. I also note the appellant's reference to other planning permissions for ancillary accommodation that were granted by the Council as support for her case that proposals of a similar nature have been approved. However, in my experience, it is rare that direct parallels can be drawn between individual schemes because the design/layout of schemes and local circumstances will often vary. Moreover, a central principle of the planning system is that each development should be assessed on its own merits, which I have done in this instance.
16. Having regard to the above and the evidence before me I conclude that the ground (a) appeal and the deemed application should not succeed.

### **The appeal on ground (f)**

17. This ground of appeal is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objection.
18. Although the Appellant has made comments under ground (f) the arguments put forward are similar to those made under the ground a) appeal. However, the appellant refers to the building being marginally outside permitted development under Class E of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) and that the 'fall-back' position would be to comply fully with PD rights and reduce the height of the building to fit within the tolerances, and to fully demolish the building would appear excessive.

19. Notwithstanding this, as I have already found the development to be inappropriate in this location and to be harmful to living conditions under the ground a) appeal, in my opinion the objective of the notice can only be achieved in this case by the steps set out in the notice. Therefore, I conclude that the requirements of the notice do not exceed what is necessary to remedy the breach of planning control which has been caused by the breach. It would not be disproportionate to require the appellant to carry out the steps required by the notice and, therefore, I uphold the requirements of the notice and the appeal fails on ground (f).

### **Conclusions**

20. I have taken into account all the other matters raised, but none are sufficient to outweigh the considerations that have led me to my conclusions that the appeal should be dismissed, and the enforcement notice should be upheld.

21. In coming to this conclusion, 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 a stronger, greener economy as we make maximum progress towards decarbonisation, making our cities, towns and villages even better places in which to live and work and embedding our response to the climate and nature emergency in everything we do.

*R. Duggan*

INSPECTOR