



Appeal Decision

by Vicki Hirst BA(Hons) PG Dip TP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 07/05/2024

Appeal reference: CAS-02773-P2T2Y0

Site address: 1 Linkside, Llangland, Swansea, SA3 4SZ

- 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 Peter Loosmore against an enforcement notice issued by the City and County of Swansea Council.
 - The enforcement notice, numbered ENF2019/0237, was issued on 28 April 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a side and rear extension and roof extension and addition of cladding to the dormer window within the eastern roof plane of the dwelling.
 - The requirements of the notice are either a) (i) demolish the unauthorised side and rear extension; and (ii) remove the roof extension and cladding to the dormer window and re-instate the dormer window to its former condition prior to the unauthorised works being carried out; and (iii) remove any resulting waste materials arising from (i) and (ii) above from the land Or (b) modify the unauthorised development so that the resulting building fully complies with the building works approved by planning permission 2020/0792/FUL.
 - The period for compliance with the requirements is six months beginning with the day on which the notice takes effect.
 - 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 29 February 2024.
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Decision

1. The appeal is allowed, and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the erection of a side and rear extension and roof extension and addition of cladding to the dormer window within the eastern roof plane of the dwelling at 1 Linkside, Llangland, Swansea, SA3 4SZ referred to in the notice, subject to the following conditions:

- i. The flat roof area of the rear extension shall not be used as a storage area, balcony, roof garden or other amenity area.

Reason: In order to safeguard the amenities of nearby residents (LDP Policy PS2).

- ii. Within three months of the date of this decision a scheme for biodiversity enhancement, including a timetable for implementation, shall be submitted to the local planning authority for approval. The scheme shall be implemented and retained in accordance with the approved details.

Reason: In the interests of maintaining and enhancing biodiversity. (Future Wales Policy 9).

Background and Preliminary Matters

2. Planning permission was granted for alterations to provide a single storey side extension with a front and side dormer in 2017 (LPA Ref: 2017/1327/FUL) and a rear extension and alterations to the roof and dormer in 2020 (LPA Ref: 2020/0792/FUL).
3. The allegation in the enforcement notice and therefore the development the subject of the deemed application for planning permission is set out in the banner heading above. The works to the property that have taken place comprise extensions and alterations of a different design to those approved. The main deviations from the approved plans are that they provide a single roof structure at the rear rather than the approved two gables, they do not provide a dividing wall on the flat roof of the ground floor extension and the dormer window on the eastern side has been extended and incorporated into the rear extension. The rear extension has been provided in anthracite standing seam cladding rather than render. The skirting below the dormer window on the eastern side of the dwelling has also been omitted. However, the Council has confirmed that this did not form part of the reasons for issuing the enforcement notice.
4. The appellant contends that the enforcement notice contains discrepancies which result in it being ambiguous and flawed. The concerns relate particularly to the reasons for issuing the notice in Section 4 and the two options in Section 5 in respect of the requirements of the notice.
5. The reasons for issuing the notice clearly explain the reasons why the Council consider the alleged breach to be unacceptable with reference to its Local Development Plan (LDP) policies. The fact that it found a different scheme acceptable and granted planning permission is not pertinent to its reasons for taking enforcement action against an alternative scheme that it alleges to be a breach of planning control in its entirety.
6. Section 5 provides two options as requirements as set out in the banner heading above. Both seek to remedy the breach of planning control. I acknowledge the appellant's claim that the first option would not result in compliance with the planning permission given and is unnecessary. However, it is not unreasonable for the Council to provide a choice of options as this provides flexibility for the appellant in the event that they do not wish to carry out the consented works. In the absence of complying with the planning permission, the total removal of the unauthorised works would ensure the breach of planning control is remedied.
7. As such I do not find any discrepancies or flaws in the notice that require correction or variation and I do not find it be either a nullity or invalid.

Ground (a) appeal and the deemed planning application

Main Issues

8. The main issues are the effect of the development on the character and appearance of the area and on the living conditions of neighbouring residents.

Reasons

Character and Appearance

9. The appeal property is a detached property located within the settlement boundary of Langland. It is located on a corner plot within a residential area comprising mainly dormer bungalows. From the plans and photographs provided, the original dwelling was one such dormer bungalow constructed of brick with a tiled roof.
10. The principle of extending the property is not in dispute and I have no reason to disagree. The Council's reasons for taking enforcement action appear to relate to the form and massing of the rear extension and the incorporation of the side dormer into the roof form of that extension, together with the provision of standing seam cladding.
11. Policy PS2 of the adopted LDP and the Placemaking Guidance for Householder Development require, amongst other things, development to enhance the quality of places and spaces and respond positively to aspects of local context and character that contribute towards a sense of space. From my assessment on site, given the location of the appeal property on a corner plot it is viewed in the context of properties within Linkside and also those within Whiteshell Drive and Westwinds that lie to the south-east and south respectively. I noted that the properties within the vicinity comprise a mixture of the original dormer bungalows constructed mainly of brick with tiled roofs and more contemporary bungalows and dormer bungalows built of a variety of materials including render with slate roofs, vertical and horizontal wooden and composite cladding, stone and standing seam cladding. Several contain extensive glazing and balconies. There is no consistent theme within the area with a variety of designs, and different forms and scales.
12. I concur with the Council that the single aspect roof on the rear extension combined with the eastern side dormer alters the scale and massing from the twin gabled extension that was previously approved. Nonetheless, the set back of the first-floor level on the flat roof and the use of contrasting materials breaks up the overall massing. Taking it in context with the surroundings that comprise an eclectic mixture of styles and design approaches, including dormers extending from the ridge of their host dwellings, I do not find the scale and massing to be out of character with the surroundings.
13. The use of anthracite standing seam cladding on the rear extension, whilst unashamedly modern, provides cohesion with other dwellings in the locality with similar finishes, albeit mainly on roofs. It also corresponds with the dormer window, and which I note was an approved material for the dormer granted as part of the 2020 planning permission. Whilst views of the rear and side of the property are afforded from the surrounding streets, the property is set back from the road, and I do not find the extensions to be unduly large or dominating in this context.
14. I note the Council has refused an application in the locality which proposed the use of metal cladding (Ref: 2019/0892/FUL). I have not been provided with the full details of that application but in any event, it does not alter my view on the particular proposal before me.
15. I conclude the development does not have a harmful impact on the character and appearance of the area and accords with Policy PS2 of the LDP and the Council's Placemaking Guidance for Householder Development.

Living Conditions

16. The Council's reasons for issuing the enforcement notice cite the unacceptable level of overlooking that would occur from the use of the flat roof of the rear extension as a

balcony area. No other concerns with the effect of the development on the living conditions of neighbouring residents are cited and from my own observations I concur with this view.

17. I note the appellant claims that the roof is not and will not be utilised as a seating/standing area as it is incapable of use and due to the safety risks of gaining access through a window and the lack of any handrail. It is also stated that due to the enclosed nature of the property there would be no benefit to the occupants in using the roof as a balcony.
18. I viewed the access onto the flat roof on my site visit. It was evident that access was via a window and was somewhat constrained. Nonetheless, access was possible and could be altered to provide a more satisfactory means of access. The flat roof tapers in width at its south-western end but nonetheless, in my view, the south-eastern end of the roof is of a sufficient size to accommodate a small seating area.
19. The garden area of 32 Whiteshell Drive is located a short distance to the south-east of the extension. The use of the roof as a seating/outside amenity area would provide a direct line of sight of the neighbouring property and garden and which, due to the roof's elevated nature, would result in an unacceptable degree of overlooking of the adjacent property. I find this would result in harm to the living conditions of the occupiers of 32 Whiteshell Drive, contrary to Policy PS2 of the LDP which requires that proposals should ensure no significant adverse impacts would be caused to people's amenity.

Conditions

20. In the event that I am minded to quash the enforcement notice and allow the appeal on ground (a) the Council has suggested that a condition be imposed restricting the use of the flat roof as a balcony or other amenity area. I note the appellant contends that such a condition is not necessary as the roof is not suitable for use as a balcony but has conceded to such a condition should I find it necessary. The Council has not suggested any other conditions.
21. I have considered the need for conditions in light of the advice in Welsh Government Circular 016/2014 "The Use of Planning Conditions for Development Management". For the reasons given above, I find that the roof could be made suitable for use as an outside amenity area. As a result of the associated harm to the living conditions of the neighbouring occupants a condition prohibiting the use is both reasonable and necessary. This would overcome the harm that I have identified would occur to the living conditions of nearby residents and would make the development acceptable. I note the Council similarly applied such a condition in the 2020 planning permission.
22. Policy 9 of Future Wales requires all development to secure a net benefit in biodiversity. I therefore find a condition requiring a scheme for biodiversity enhancement, including a timetable for implementation, to be submitted to and approved in writing by the LPA to be reasonable and necessary to accord with Policy 9.

Conclusions

23. I have had regard to all other matters raised. For the above reasons I conclude that the development is acceptable and planning permission should be granted subject to conditions. The appeal therefore succeeds on ground (a) and the enforcement notice is quashed. In this circumstance the appeal on grounds (f) and (g) does not need to be considered.
24. 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

Ref: CAS-02773-P2T2Y0

in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives as required by section 8 of the Act.

Vicki Hirst

INSPECTOR