
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 9/10/18

gan Iwan Lloyd BA BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 03/12/18

Appeal Decision

Site visit made on 9/10/18

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 03/12/18

Appeal Ref: APP/B6855/C/18/3203056

Site address: Land at 106 Graig Road, Morryston, Swansea SA6 8PQ

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Karl Palmer against an enforcement notice issued by City and County of Swansea Council.
 - The enforcement notice, numbered ENF2017/0034, was issued on 20/04/2018.
 - The breach of planning control as alleged in the notice is "without planning permission, the change of use of land to a scaffolding storage yard and the erection of associated buildings and means of enclosure".
 - The requirements of the notice are to "cease the use of the land as a scaffolding storage yard and remove all buildings and means of enclosure from the land".
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal on ground (b) succeeds in part and the enforcement notice is corrected by the substitution of the plan attached to this decision for the plan attached to the notice. Subject to this correction the appeal is dismissed and 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.

The ground (b) appeal

2. The appellant claims that the garage building has never been used for the scaffolding business, and this element of the notice has not occurred. The Council has not produced relevant evidence to indicate that at the time the notice was served the garage was indeed used for the purposes associated with the alleged use. A photograph of a lorry parked outside the garage does not provide this evidence nor is the fact that the garage was built on land owned by the appellant.
 3. The corroborated link between the use of the garage and the larger unauthorised site has not been established as a matter of fact and degree. The appellant claims that he uses the garage for domestic purposes although having been erected outside the curtilage of the property.
 4. In the light of the above, I conclude that as a matter of fact it has not been shown that the alleged use within the garage has occurred. I shall use my powers of
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correction under Section 176 to reduce the area of the notice so as to exclude the garage from the notice. All other buildings associated with the use are caught by the notice as corrected.

5. To this limited extent the appeal on ground (b) succeeds.

The ground (a) appeal and the deemed application

6. The ground (a) appeal and the deemed application derives its terms directly from the allegation. Given the success for the appellant under ground (b) the plan attached to this decision excludes the garage building from the notice and consideration under the ground (a) appeal. The main issues are; the effect of the development on the character and appearance of the area, the effect on the living conditions of nearby residents in relation to noise and disturbance and, the effect of the development on highway safety.

Character and appearance

7. The appeal site is located adjoining Graig Road between residential properties Nos. 103 and 110 Graig Road. Graig Road is a single width road accessed from Clyndu Street. Graig Road is situated on the side of rising topography to the west and land sloping down to the east. Both sides of the slope have trees and shrubbery growing with residential properties laid-out in linear pockets on the west side of the road.
8. From the roadside the site is enclosed by fencing of variable height and design. The scaffolding structures are generally below the enclosure apart from when the gates are open for delivery. The array of fencing is detrimental to the appearance of the area and reflects the commercial use of the site that adjoins in close proximity to other residential properties. The appearance of the site is visually discordant to the surrounding area and conflicts with Policies EV1, EV2 of the Swansea Unitary Development Plan (UDP). I have considered the appellant's suggestion of a landscaping condition but there is little scope for this that would result in disguising the site from the roadside.
9. The appellant refers to other scaffolding storage facilities nearby which are not lawful; however, whilst this may be the case the ground (a) appeal is directed at the breach of planning control on the appeal site. Other similar unauthorised developments do not justify the appeal development as it would be considered on its individual merits in accordance with the development plan and other material considerations.
10. I conclude that the development harms the character and appearance of the area.

Living conditions

11. The appellant indicates that the scaffolding storage use is used some 2 or 3 times per week and rarely would the equipment be brought back to the appeal site for storage because it would be moved to the next site. The appellant claims that no machinery is used and a formal noise assessment is being prepared.
12. The Council indicates that the frequency of the use is unclear and that no planning conditions could be imposed to restrict the number of visits. I would concur that the nature of the use could fluctuate in intensity as demand for the business varies. It would be difficult to restrict the use in terms of these fluctuations. No noise assessment has been submitted with this appeal and I must consider the use of the land and its effect to its full unhindered extent in terms assessing the impact. The loading and unloading of scaffolding onto a lorry/van inevitably results in some noise particularly where the scaffolding buildings are located immediately adjoining a

neighbouring property boundary. Some noise and disturbance would arise from the movement of vehicles within the site and I concur with the Council that ambient noise levels are likely to be low in the vicinity. The use is likely to generate noise and general disturbance through activity and movements of vehicles over and above background levels to the detriment of neighbouring occupants.

13. The use is therefore not compatible with the residential area in which it is situated between properties. Although No. 110 is owned by the appellant, the development is next to another property and the living conditions of occupiers of this house would be harmed given its close proximity to the use enforced against. I consider that the development would conflict with UDP Policies EV1, EV40 and EV2, in so far as these relate to the issue of living conditions in terms of noise and disturbance.
14. I conclude that the development harms the living conditions of nearby residents in relation to noise and disturbance.

Highway safety

15. I noted that the junction at the northern end of Graig Road and Clyndu Street is a full 180 degree turn narrowing to a single width road. There is another entry point further along beyond a small build-out island for vehicles predominantly turning left traveling north. Cars are parked on Graig Road and these limit the passing width for vehicles. The appellant contends that the issue is irrelevant because a scaffolding van would still be used to drive to and from the appellant's house. However, the use of land could generate more movements than that set out by the appellant particularly when the business intensifies, and any intensification of movement would give rise to unacceptable consequences from a highway safety point of view, due to the confined nature of the roads and junctions in the area.
16. Whilst the appellant's vehicle is a 3.5 tonne van, it is larger than a domestic size car. I have no record of incidents and accidents but the confined nature of the road is not suited to commercial traffic associated with the use. I consider that the development conflicts with UDP Policies AS2 and EV1, in so far as these relate to the issue of highway safety.
17. I conclude that the development harms highway safety.

Conclusions

18. The appellant notes that the site had been used to store builder's materials and a skip had been sited on the land. The Council indicates that this does not provide evidence of continuity of use over the requisite period for it to become lawful. No ground (d) appeal has been lodged and no evidence has been produced to corroborate these claims. Based on the available evidence before me no such claim on immunity of use has been made out.
19. The appellant claims that he employs full-time and part-time workers in the trade and that he would not be able to afford to rent a storage area in the area. The appellant notes that turning down the appeal would make the business unviable and result in job losses.
20. My overall conclusion is that the harm I have identified above outweighs the possible loss and dis-benefits associated with the appellant's business. The notice is a proportionate response having regard to the competing issues of the private interests of the appellant business against the public interest of enforcing against the development.

21. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (the WBFG Act). In reaching my decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives set out in section 8 of the WBFG Act.
22. My conclusion is that the ground (a) appeal and the deemed application should not succeed. The appeal on ground (b) succeeds in part and the plan attached to this decision substitutes the plan attached to the notice. Subject to this the enforcement notice is upheld.

Iwan Lloyd

INSPECTOR



Plan

This is the plan referred to in my decision dated:03/12/18

by **Iwan Lloyd BA BTP MRTPI**

Land at: 106 Graig Road, Morriston, Swansea SA6 8PQ

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Not to Scale:

