



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 15/10/18

gan **Richard E. Jenkins BA (Hons) MSc MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 15.11.2018

Appeal Decision

Site visit made on 15/10/18

by **Richard E. Jenkins BA (Hons) MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 15.11.2018

Appeal Ref: APP/B6855/C/18/3206838

Site address: Land at Penyrheol Farm, Penclawdd, Swansea, SA4 3HY

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 Mr Ashley Jones against an enforcement notice issued by City and County of Swansea Council.
 - The enforcement notice, numbered ENF2016/3060, was issued on 12 June 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a partially constructed building (the approximate position of which is marked with an 'X' on the attached plan).
 - The requirements of the notice are: 1. Demolish the partially constructed building; and 2. Remove from the Land all of the building materials and/ or rubble arising from requirement (1) above.
 - The period for compliance with the requirements is 12 weeks beginning with the day on which this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Preliminary Matters

2. Given that the prescribed fees have not been paid, there is no valid ground (a) appeal or any application for planning permission deemed to have been made under section 177(5) of the Act. For the avoidance of any doubt, that means that the planning merits of the development alleged to comprise the breach of planning control are not relevant to this appeal.

Reasons

3. The appeal relates to an enforcement notice issued in respect of a partially constructed building located on land at Penyrheol Farm in Penclawdd, Swansea. The planning history at the site is complicated, although it is common ground that the land upon which the partially constructed building is located was formerly occupied by an out-building.
 4. It is notable that planning permission was granted under application Ref:2013/0590 for, amongst other things, the conversion of the former out-building to a residential holiday let. However, during construction it became apparent that the building was
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incapable of conversion without substantial structural works which subsequently led to its collapse. A subsequent planning application was submitted, under Ref:2017/0291, for the retention and completion of the building to a detached holiday let. However, that application was refused by the LPA and dismissed at appeal¹, with the Inspector determining that the development no longer comprised a conversion, but rather a new build. A further application was lodged under Ref:2017/2130/FUL for the retention and completion of a detached garage and ancillary living accommodation. However that application was also refused and dismissed at appeal², with both the LPA and the respective Inspector determining that, amongst other things, the partially constructed building was sited outside of the curtilage of the residential dwelling at Penyrheol Farm.

The Appeal under Ground (c)

5. An appeal under ground (c) is that there has not been a breach of planning control. In this case, the appellant argues that the matters that comprise the alleged breach of planning control represent permitted development, with a number of independent supporting statements seeking to corroborate the appellant's contention by confirming that the site of the partially constructed out-building historically incorporated a building that was used in association with the residential use of Penyrheol Farm.
6. Permitted development rights afforded to residential properties are set out in the Town and Country (General Permitted Development) Order 1995, as amended for Wales (hereinafter referred as the GPDO or the Order). Specifically, permitted development rights relating to out-buildings are set out under Class E, Part 1 of Schedule 2 of that Order. Such rights only apply, however, to development proposals that would be located within the residential curtilage of the associated host property.
7. The first appeal decision referred above³ made reference to the former out-building as being sited within the residential curtilage of Penyrheol Farm. However, it is clear that the extent to which the building formed part of the residential curtilage was more extensively considered as part of the subsequent appeal that followed the Council's refusal to grant planning permission under Ref:2017/2130/FUL. Indeed, that appeal decision explicitly clarifies that the difference in interpretation of such a matter is due to the fact that the first inspector was not in possession of the same evidence that proved determinative to the latter appeal. In this respect, and whilst acknowledging the fact that the former building was used for the storage of domestic paraphernalia, the Inspector determining the second appeal concluded that the land incorporating the partially constructed building fell outside of the residential curtilage of Penyrheol Farm. In coming to this conclusion, it was found that the elements of domestic use did not materially change the use of the land in question from agricultural to residential.
8. The evidence before me is similar to that determined in the second appeal although, in determining this current appeal, I have given specific attention to the fresh evidence that includes the sworn statements in support of the appellant's case. However, whilst I have no reason to dispute the content of such statements, I have not seen anything by way of cogent evidence that materially differentiates the case before me from that already considered by the previous Inspector. Indeed, despite previously incorporating an element of domestic use, the aerial photographs indicate that the building that formerly occupied the wider area of hardstanding was sited in a separate

¹ Appeal Ref: APP/B6855/A/17/3176559

² Appeal Ref: APP/B6855/A/17/3191714

³ Appeal Ref: APP/B6855/A/17/3176559

enclosed area to that of the residential garden area associated with the house at Penyrheol Farm.

9. Such a finding is consistent with the situation found at the time of my site visit, with the residential curtilage of the dwellinghouse at Penyrheol Farm appearing to be well-defined by a post and rail fence that sits at a higher ground level than the wider hard surfaced area that incorporates the building subject of the enforcement notice. Such observations are also supported by the fact that an earlier planning application⁴, which sought permission to extend the property, incorporated a location plan with red line that excluded the land that encompasses the appeal building. I have fully considered the fact that Penyrheol Farm has not been functioning as a farm for a number of decades. However, such a factor should not on its own be determinative and does not therefore persuade me that there has been a material change of use of the land in question.
10. The LPA contends that the development also fails to meet other requirements of Class E of the Order. However, given that I have found that the development lies outside of the residential curtilage of Penyrheol Farm I need not consider whether the development satisfies the other criteria contained within Class E. Indeed, the fact that the development has not been found to fall within the residential curtilage means that the development does not comprise permitted development for the purposes of the GPDO, regardless of its scale or position relative to the principal elevation of the host property. It therefore follows that there has been a breach of planning control and that the appeal under ground (c) must fail.
11. I note the appellant's contention under this ground of appeal that the development would not cause material harm to the character and appearance of the area. I also acknowledge the appellant's suggestion that weight should be attributed to the unfortunate and unintentional circumstances that led to the collapse of the building that formerly occupied the land. However, such matters clearly require consideration of planning merits that can only be considered in an appeal with a deemed planning application. Similarly, the benefits that the development would bring to the appellant's family are not relevant to the determination of an appeal under ground (c).

The Appeal under Ground (f)

12. The appeal under ground (f) is that the steps required to comply with the requirements of the enforcement notice are excessive and that lesser steps would overcome the objections. Specifically, the appellant contends that the requirement to demolish the partially constructed building would be unreasonable and that demolishing only the 'extension' to the partially constructed building, leaving a structure with a footprint akin to that of the original out-building, would represent a more proportionate requirement given the set of circumstances that led to the appeal.
13. It is clear from the planning history at the site, and indeed my finding that there has been a breach of planning control, that the rebuilding of the former out-building without the 'extension' referred within the evidence does not represent a lawful fall-back position. As such, and bearing in mind the absence of a deemed planning application whereby planning merits could be considered, I do not consider that the reconstruction of the former building represents an appropriate lesser step. Indeed, it would fail to remedy the breach of planning control and fail to remedy the identified injury to amenity. It therefore follows that the appeal under ground (f) must fail.

⁴ Ref: 2013/0498

14. I note the appellant's reference to the potential adverse effects of complete demolition, including those on the local bat population. However, I have not seen anything to indicate that the partly constructed building provides an important habitat for bats and the weight to be attributed to any positive benefit of the provision of bat roosts on the proposed building amounts to an issue of planning merits that is beyond my jurisdiction in determining this appeal.

Overall Conclusions

15. Based on the foregoing, and having considered all matters raised, I conclude that the appeal should be dismissed and that the enforcement notice should be upheld.

Richard E. Jenkins

INSPECTOR