



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 08/09/21

gan **A L McCooey BA (Hons) MSc MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 09/12/2021

Appeal Decision

Site visit made on 08/09/21

by **A L McCooey BA (Hons) MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 09/12/2021

Appeal Ref: APP/B6855/C/21/3272584

Site address: 1 Waun Gron Close, Treboeth, Swansea, SA5 7DH

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 J Collins against an enforcement notice issued by City and County of Swansea Council.
 - The enforcement notice, numbered ENF2017/0278, was issued on 10 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a detached garage including a raised platform base and siting of an air conditioning unit.
 - The requirements of the notice (in part 5) are:
 - (i) Demolish the garage and raised platform base
 - (ii) Remove all the materials resultant from the actions of part 5 (i) from the land
 - (iii) Remove the air conditioning unit from the service/amenity area
 - (iv) Reinstate the driveway to the level on site prior to the commencement of works specified in part 3 of this notice.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) a), c), f) and g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by replacing 11 Waun Gron Close in Part 4 with 11 Waun Gron Road and the appeal is allowed insofar as it relates to the erection of a detached garage including a raised platform base and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for a detached garage including a raised platform base on land at 1 Waun Gron Close, Treboeth, Swansea, SA5 7DH referred to in the notice, subject to the following conditions:
 - 1) Within 1 month of the date of this decision a 1.8m high close-boarded fence shall be erected in the position shown on plan FP1-2021 and shall be permanently retained thereafter.

Reason: In order to protect the living conditions of adjoining residents in accordance with Policy PS2 of the Swansea Local Development Plan.
 2. The appeal is dismissed and the enforcement notice is upheld as corrected for the siting of an air conditioning unit, and planning permission is refused in respect of the
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siting of the air conditioning unit, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters and the Enforcement Notice (EN)

3. The appellant argues that the driveway has become immune from enforcement action by virtue of s173 (11) of the 1990 Act because it is not referred to in the breach of planning control in the EN. This is a misunderstanding of s173 (11), which has effect only in relation to works that are alleged by the EN to constitute a breach; but are not included in the requirements of the EN. The driveway leading to the garage is not included in the description of the breach in part 3 of the EN, but reinstatement to the level prior to the works is a requirement of the EN. This is a legitimate requirement as the driveway provides the means of access to the garage and its revised level relates to the raised platform base.
4. The appellant argues that Requirement i) is unclear as to whether it relates to the base for the garage or the raised area to the rear. I find that there is no ambiguity as the levels have been raised to create the base on which the garage sits and this is what is targeted in the EN. So the garage and base are required to be removed. The small area to the rear would also have to be removed as part of this operation.
5. It is acknowledged that there is an error in part 4 of the EN (Reason for issuing the EN) in that the wrong address has been given for the neighbouring property. This can be corrected by replacing 11 Waun Gron Close in Part 4 with 11 Waun Gron Road. There can be no prejudice to any party as it is clear from the context which property is affected and this error has been discussed by the parties in the submissions.

Application for costs

6. An application for costs was made by Mr J Collins against the City and County of Swansea Council. This application is the subject of a separate Decision.

Reasons

7. The site contains an extended semi-detached house with the garage to the rear. The adjoining house to the east is at a lower level. The eastern side and rear boundaries are defined by fences on top of retaining walls. There is a small area to the rear of the garage that is almost completely enclosed by the garage and boundary treatments. It is accessed by a rear door from the garage and contains some storage and an air conditioning unit (A/C unit).
8. An extension to the dwelling and a garage were approved under planning permission 2015/2123 in November 2015. The evidence is that the base was constructed by sometime in 2016. Details have also been approved for the boundary treatment to be erected along the shared boundary with 11 Waun Gron Road, which was required by a condition of the approval.

Appeal on Ground c)

9. The appellant claims that the garage, as constructed, has been approved under the extant planning permission. The Council considers that the garage has not been constructed in accordance with the approved details in terms of the infilling of the site that has taken place and its design, size and appearance.
10. Photographs supplied by the Council show that originally the rear of the site was at a lower level and the drive sloped down to the former garage buildings. The rear garden has been infilled and a base has been created on which the new garage has

been erected. The garage floor is now level with the top of a pre-existing brick wall (shown on the photographs), the rear part of which appears to be around 1.5 to 2m high. There are some indications of raised site levels on the approved plans of the elevations of the extension. The plans for example, show pre-existing steps at the rear of the extension being removed as part of infilling.

11. The appellant argues that the drainage arrangements shown on the approved block plan imply that the garage had to be at a raised level and that it would have been impractical to gain access to the garage if it were at a lower level. No indication of raised levels has been provided on the plans of the garage and no levels are shown on the approved block plan. The appellant acknowledges that the submitted documents do not comprehensively show the proposed levels within the site. The drive could have been at a lower level to access the garage and the indications of drainage arrangements provides no details of their proposed depth. I therefore consider that the approved plans do not indicate the extent of infilling to the rear of the dwelling where the garage is sited and this aspect has not therefore been approved. The appellant points out that the Local Planning Authority did not query the site levels during site visits in 2016 & 2017. This does not alter the fact that an EN has been issued and must be considered.
12. The garage building has not been constructed in accordance with the approved plans. It is slightly longer and lower than that approved and different materials have been used. The window in the side elevation is considerably larger than that approved and a door has been added to the rear in order to provide access. The A/C unit was not shown on the approved plans. It is not a building and so cannot benefit from permitted development rights under Class E of Part 1 of General Permitted Development Order. There are no other permitted development rights that could apply.
13. For all the reasons given above, I conclude that the garage has not been constructed as approved and is materially different to that which was approved. I also consider that the A/C unit is not permitted development. The appeal on ground c) fails.

Appeal on Ground a)

14. The main issue is the effect of the development on the living conditions of neighbouring occupiers.
15. Policy PS2 of the Swansea Local Development Plan relates to Placemaking and requires proposed development to enhance the quality of places. All proposals should ensure that no significant adverse impacts would be caused to amenity. The Council and the objectors raise no concerns in regard to the garage itself. The objector does not wish there to be any further upheaval works to reduce the site levels. I agree as, whilst the garage is prominent, it does not appear out of place in the context of existing built development, given the extant approval. Their concerns relate to the potential for overlooking from the raised area to the rear of the garage, accessed via a rear door. This is a small area of around 6 m² and was in use for storage and the siting of an A/C unit at the time of my visit.
16. The Local Planning Authority considers that overlooking could be addressed by screening or removal of the rear door and all use of this area to cease, which the Council considers would need to be controlled by a Section 106 agreement. The objector wishes for this area to be screened and not used for amenity purposes. The appellant suggests that screening by a fence and restricting the use to domestic storage only would address the concerns regarding overlooking.

17. The overlooking issue could be addressed by a condition requiring the provision and retention of a 1.8m close-boarded fence within say 1 month of any consent. The appellant has indicated its position on submitted plan FP1-2021. The Council argues that such a fence would have an unacceptable impact on the adjoining property. I do not agree because a relatively short length of fence would be required and there is already a fence and the garage building enclosing the area.
18. The A/C unit is sited in the corner of the rear area. It is stated to be 890mm high and wide. I have concluded that it would require planning permission. The unit operates the cooling system within the dwelling. The operational noise levels are stated as between 54 and 57 dBA. It is likely to be in operation during periods of hot weather when adjoining residents would be in their garden. There has been a complaint regarding the siting of this unit and its effect on living conditions. I therefore conclude that the A/C unit in this position would have an adverse effect on the amenity of adjoining occupiers by virtue of noise, contrary to Policy PS2. Planning permission for the A/C unit should be refused.
19. If the A/C unit were removed as required by the EN, then there would be little need to enter this area. This is a small area, which would not be attractive for sitting out or as an amenity space. I therefore consider that conditions or other mechanisms restricting its use would be unnecessary given the screening to be provided and its limited size and position.
20. I conclude that planning permission should only be granted for the erection of a detached garage including a raised platform base, subject to conditions requiring the provision and retention of a 1.8m close-boarded fence within 1 month of any consent. S180(1) of the Town and Country Planning Act 1990 provides that where planning permission is granted after the service on a copy of the EN for any development already carried out, the EN shall cease to have effect insofar as it is inconsistent with the planning permission. This means that the planning permission hereby granted for the garage and raised platform base overrides the EN (and its requirements) in relation to those matters. The EN would remain in effect in respect to the A/C unit.

Grounds f) and g) and other matters

21. The EN requires the removal of the A/C unit and no lesser steps or alternatives for this have been suggested. The appeal on ground f) therefore fails. I consider that a period of 3 months is adequate for this work to be undertaken. The appeal on ground g) also therefore fails.
22. As the appeal has succeeded on ground a) and not ground c), then there is no need to consider the appellant's request to issue a lawful development certificate.

Conclusion

23. Having taken all the submitted evidence and relevant matters into consideration, I conclude the following:
 - The EN as corrected is sound;
 - The appeal on ground c) is not substantiated;
 - The appeal on ground a) succeeds in relation to the detached garage including a raised platform base, subject to conditions. It is dismissed in relation to the siting of an air conditioning unit and the EN is upheld in this regard.
 - The appeal on grounds f) and g) fails.

24. 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 this 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 as required by section 8 of the WBFG Act.

A L McCooey

Inspector