The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 25/09/18

gan Alwyn B Nixon BSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 02/11/18

Appeal Decision

Site visit made on 25/09/18

by Alwyn B Nixon BSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 02/11/18

Appeal Ref: APP/V6945/C/18/3201274

Site address: 9 South Avenue, Sebastopol, Pontypool, NP4 5BN

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 and Mrs Stephen and Tina Brown against an enforcement notice issued by Torfaen County Borough Council.
- The enforcement notice was issued on 26 March 2018.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a conservatory.
- The requirements of the notice are: (i) demolish the conservatory and remove the resultant material from the land; (ii) restore the land to its former condition prior to the breach taking place.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal Ref: APP/V6945/A/18/3201394

Site address: 9 South Avenue, Sebastopol, Pontypool, NP4 5BN

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr and Mrs Stephen and Tina Brown against the decision of Torfaen County Borough Council.
- The application Ref 17/P/0966/HH, dated 18 December 2017, was refused by notice dated 12 February 2018.
- The development proposed is the retention of a conservatory.

Decisions

1. Appeal APP/V6945/C/18/3201274: The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

2. Appeal APP/V6945/A/18/3201394: The appeal is dismissed.

The Ground (e) appeal against the enforcement notice

3. The basis of the ground (e) appeal is that the notice was not properly served. Whilst the appellants accept that the notice is valid on its face, they say that the manner of service failed to comply with Regulation 13 of the Town and Country Planning General Regulations 1992, which states that any notice or document referred to in Section 329(2) of the Town and Country Planning Act 1990 shall be marked with the words "Important – This Communication affects your Property" upon the notice or document and upon the envelope containing it. In this case, whilst the words in question are present at the head of the enforcement notice, they did not appear on the envelope in which the notice was delivered. Consequently, it is contended, the relevant legal requirements for proper service have not been met.

4. I do not accept this argument. Section 329(1) provides a number of alternative means of service of an enforcement notice. 329(1)(b) says that the notice may be served or given by leaving it at the usual or last known place of abode; in this case the notices were personally addressed to the appellants and delivered by hand to their home. Section 329(2) goes on to state that where the notice is required to be served on any person as an occupier of premises, it shall be taken to be duly served if (a) it is addressed to him by name and is delivered in the manner specified in subsection 1(a), (b) or (c). This was done here. The requirement in Regulation 13 of the 1992 General Regulations relied upon by the Appellants relates to Section 329(2)(b) of the Act, which is not engaged in this case because the manner of service was in accordance with Section 329(2)(a).

5. I conclude that the notice was properly served. The appeal on ground (e) therefore fails.

6. Moreover, even if the absence of the words "Important – This Communication affects your Property" on the envelopes containing the notices had been in contravention of the legal requirements in this case, I find no evidence that the appellants were materially disadvantaged. It is clear that there had been a detailed dialogue with the Council about the unauthorised development before the notice was served. There is no suggestion that the appellants were somehow unaware of the notice for any significant period after it was served, such that their ability to respond fully by way of an appeal was compromised.

Ground (a) and the applications for planning permission

7. The enforcement notice concerns the erection of a conservatory at the rear of 9 South Avenue, which is a semi-detached house paired with No 11. The conservatory has been erected on a pre-existing raised patio area which extends for some way down the sloping rear garden area. The conservatory has been erected alongside the shared boundary with No 11. It sits behind an older single storey addition to the original dwelling. The conservatory measures about 6.25m in length; taken with the pre-existing rear extension which has a depth of 2.7m, the conservatory projects almost 9m from the main rear wall of Nos 9 and 11.

8. The conservatory as built extends a long way down the garden boundary shared with No 11. Its effect on the occupiers of No 11 due to the length of the extension in combination with the earlier lean-to addition is exacerbated by the increased height of the structure relative to the garden level of No 11 resulting from its position on top of the raised patio. I do not agree that a boundary fence or wall, typically up to 2m in height relative to adjoining natural ground level, would have a comparable scale of effect. From my on-site observations and the photographic evidence provided I am in

no doubt that the conservatory as built has an overly dominant and unacceptably overbearing impact upon the living conditions of occupiers of No 11. This conclusion is not altered by the modest lean-to extension which I saw nearing completion to the rear of No 11; even taking this into account I consider that the conservatory is unacceptably harmful by reason of its size and raised position on the boundary. In the light of this I conclude that the conservatory extension fails to satisfy the provisions of policy BW1 A i), ii) and vi) of the adopted Torfaen Local Development Plan (LDP), which seek that proposals avoid overdevelopment in terms of their massing and form and that development takes account of the local context in terms of its design and siting and avoids unacceptable impact upon adjoining occupiers.

9. As built, the conservatory has extensive clear glazing along its side elevation facing No 11. This permits direct overlooking of the private amenity space of No 11 and towards the rear-facing windows of No 11 from inside No 9 to a much greater degree than was previously the case. Whilst it is true that the raised outside patio would have permitted a certain amount of overlooking of No 11 prior to the erection of the conservatory, the new indoor space is likely to be more frequently and intensively used, thereby increasing the adverse consequences for privacy. I conclude that the conservatory as built unacceptably harms the privacy of occupiers of No 11, and thereby again fails to satisfy LDP policy BW1 A vi) concerning avoidance of unacceptable impact upon adjoining occupiers.

10. I recognise that the degree of overlooking could be considerably reduced by the introduction of obscure glazing where necessary, instead of the clear glazing present. This could be required by a condition attached to any permission granted. However, whilst this would address the issue of overlooking and effect on privacy, the overbearing and dominant impact on occupiers of No 11 due to the conservatory's size and height relative to the garden level of No 11 would remain. I consider that the impact of the conservatory would remain unacceptable even with the incorporation of obscure glazing so as to maintain adequate privacy.

11. The application for planning permission which is the subject of appeal proposed a further modification to the conservatory as built, namely the substitution of much of the glazing along the side elevation of the conservatory with solid walling with a rendered external finish. However, whilst this again would overcome much of the overlooking issue, the resultant solid wall area would, if anything, accentuate the physical presence of the structure and its overbearing impact upon the adjacent occupiers. I therefore conclude that this modification to the design would not succeed in achieving an acceptable outcome, and that the development would still conflict with the development plan.

12. I have considered all other matters raised. Whilst I acknowledge that the architectural character of the locality is not of particular sensitivity, as would be the case with a conservation area, and rear extensions of various forms are present elsewhere, this does not diminish the requirement to have regard to LDP policy BW1 which is relevant to all development proposals. I note that the conservatory is located on the north side of No 11, and so does not have materially adverse effects in terms of daylighting or loss of sunlight/overshadowing. However, these matters do not alter the unacceptable impact that I have identified in other terms. Neither these matters, therefore, nor anything else raised, are sufficient to outweigh the conclusions which have led me to my decision.

13. 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 in accordance with the Act's sustainable development principle through its

consistency with the objectives concerning environmental well-being and supporting cohesive and attractive communities.

14. For the reasons given, the appeal on ground (a) against the enforcement notice, the accompanying deemed application for planning permission and the appeal against the Council's refusal of planning permission all fail.

Ground (f)

15. The basis of the appeal on ground (f) repeats the contention that modifying the structure, by introducing a solid wall area to replace some of the glazing so that the adverse effect on privacy is reduced, would be an effective remedy, rather than removing the conservatory. It is said on ground (f) that such an alternative proposal is already in existence, by reason of the refused scheme which is the subject of appeal APP/V6945/A/18/3201394, and for which it is open to me to grant planning permission. However, I have considered the merits of this modified proposal above, and concluded that it does not represent an acceptable way forward. The ground (f) appeal therefore fails.

Ground (g)

16. For the appellants it is argued that 4 months is an unreasonably short time within which to comply with the requirement to remove the conservatory. I recognise that the appellants quite reasonably would wish to engage contractors who would dismantle the structure with care so as to enable elements of the structure to be salvaged for re-use so far as possible. However, it seems to me that careful dismantling of the structure would not be a lengthy process, once commenced. I consider that a 4 month period, whilst not overly generous, is adequate. A longer period, such as the 8 months argued for by the appellants, would encourage further delay in remedial action and subject the occupants of No 11 to ongoing harm over an extended period. Even allowing for the occurrence of the Christmas/New Year period within this stipulated timescale, I conclude that the period specified in the notice gives a reasonable time for compliance with its requirements. The appeal on ground (g) therefore does not succeed.

Overall conclusion

17. For the reasons given above, and having taken account of all matters raised, I dismiss both appeals. I uphold the enforcement notice, and deny planning permission, both on the deemed application concerning the structure as built and for the structure as modified in the refused planning application to the Council.

Alwyn B Nixon

Inspector