

**Planning Applications
Recommended For Refusal**

<u>ITEM 2.1</u>	
<u>APPLICATION NO:</u> P2014/0496	<u>DATE:</u> 11/08/2014
PROPOSAL:	Retention of self contained residential dwelling and associated car parking.
LOCATION:	Crosswinds, 39 Cimla Common, Cimla, Neath SA11 3SU
APPLICANT:	MRS LINDA REES
TYPE:	Full Plans
WARD:	Neath South

BACKGROUND INFORMATION

The application has been called to Committee by Cllr Peter Rees as he wishes the Committee to consider the potential impacts of the decision upon the development, as it has already been carried out.

Planning History:

None

Publicity and Responses if applicable:

The application was advertised on site, and 6 individual properties were consulted by letter. To date no representations have been received.

Head of Engineering and Transport, Highway Section - No Objection, subject to conditions requiring an additional two off street car parking spaces being provided to serve the proposed dwelling.

Neath Town Council - No objections.

Description of Site and its Surroundings:

The donor property, No 39 Cimla Common is a single storey detached bungalow, set within Cimla, a residential suburb of Neath. The dwelling is of a similar design and scale as the two other properties to the east, provided with front and rear gardens. The properties front a highway, beyond which is an open grassed "common". To the west of the site a

single storey “church hall” is set in a similar building line, and beyond this further residential properties. The area is predominantly residential in character, with some commercial “local needs” facilities and community uses.

The application site is limited to an area of the existing residential curtilage, and sub-divides the plot into two separate units. It incorporates a small section of the front garden for parking of one vehicle, a pedestrian pathway running between the existing dwelling and the adjoining property, No 41, and a significant proportion of what was the rear private garden area, measuring 12m by 12m (144 sq.m).

Brief description of proposal:

Background

Members should be aware that the physical development of the site has been carried out, and the building, partial enclosure and subdivision of this plot has taken place without the benefit of planning permission. Whilst the applicant sought pre-application advice regarding the provision of an outbuilding/annexe to their property from the Local Planning Authority, the building has been constructed as a self-contained residential dwelling, with all associated facilities, and its own services. In addition the applicant has sought a separate postcode and address for this property. As such this application is not for the change of use of an outbuilding to a residential dwelling, but for the retention of a self contained residential dwelling.

The applicant states that the development was originally for a family member to reside in as an “annexe” to the existing dwelling. However, it should be clarified that the scale and nature of the accommodation provided within the building, create a development that the Authority does not consider would be permitted development. As such planning permission for this building as an annexe would still have been required. The sub-division of the site into two separate plots, and the provision of separate services (electric meter etc) to serve the new building, only reinforces the conclusions that the building has not been constructed with the intent of being used as an annexe.

Description

As detailed above, the means of access to the plot is provided via a pedestrian only path 1.4m wide, running parallel with the common boundary to No 41 adjacent. At the front of the site the applicant

proposes to again sub-divide the plot to provide a car parking space for a single vehicle.

In addition to the parking and access to the new dwelling the application site has sub-divided the rear garden of the existing dwelling, enclosing 144 sq.m. (12m x 12m) of the previous rear garden which measured 187.2 sq.m (15.6m deep x 12m wide). This amounts to approximately 77% of the rear garden area which is no longer able to serve the existing dwelling, being enclosed by a timber fence which is set approximately 3.6m (not the 5.12m shown on the plans) off the main rear wall of the original property, and rises to a height of 2.5m high (from the slightly lower ground levels of no. 39).

The new dwelling is “L” shaped and extends almost the total width of the rear garden, 10.05m, by 4.68m deep. It has a projecting wing extending 4.8m by 4m wide, and has a ridged roof to a height of 3.4m. It has a footprint of 66.2 square metres (in comparison to the 76 square metres of the host property, No 39). At its closest point the dwelling is set 5m off the main rear Elevation of the Host property, with the main elevation 9.8m away. A self-contained garden / amenity space is provided between the main elevation and the enclosure with no. 39.

The dwelling provides a lounge/diner, bathroom, study and bedroom. There are windows to the front elevation and to the side elevation of the wing, facing into the plot. Externally it is finished in render with a tiled roof.

Material Considerations:

The material issues for consideration in this application concern the principle of development, having regard to land use and development plan policy, the impact on residential amenity of occupiers of the dwelling and adjoining properties, visual amenity and the pattern, density and character of the area and highway and pedestrian safety.

Policy Context:

Planning Policy Wales, Edition 7, July 2014 in relation to housing provision clearly states that;

*9.3.2 Sensitive **infilling** of small gaps within small groups of houses, or minor extensions to groups, in particular for affordable housing to meet local need, may be acceptable, though much will depend upon the character of the surroundings and the number of such groups in the area.*

Significant incremental expansion of housing in rural settlements and small towns should be avoided where this is likely to result in unacceptable expansion of travel demand to urban centres and where travel needs are unlikely to be well served by public transport. Residential development in the vicinity of existing industrial uses should be restricted if the presence of houses is likely to lead residents to try to curtail the industrial use.

9.3.3 Insensitive infilling, or the cumulative effects of development or redevelopment, including conversion and adaptation, should not be allowed to damage an area's character or amenity. This includes any such impact on neighbouring dwellings, such as serious loss of privacy or overshadowing.

9.2.13 Development plans should include clear policy criteria against which applications for development of unallocated sites will be considered. Sensitive design and good landscaping are particularly important if new buildings are successfully to be fitted into small vacant sites in established residential areas. 'Tandem' development, consisting of one house immediately behind another and sharing the same access, may cause difficulties of access to the house at the back and disturbance and lack of privacy to the house in front, and should be avoided. (emphasis added)

In this specific circumstance the development of this site would clearly amount to “Tandem Development” and the potential detrimental impacts of such development are identified within Planning Policy Wales. The use of land fronting another property, and the insensitive sub-division of an existing property, to provide a self contained dwelling is highlighted. These types of development can undermine and damage an area's character and result in detrimental impacts upon the amenity of adjoining properties.

In this case the report will identify the issues raised from this development, and how these matters, highlighted within Planning Policy Wales are present on this site, and therefore that the development would be contrary to the principles set out within Planning Policy Wales.

Technical Advice Note 12: Design, July 2014, also refers to the need to consider local context and character, but at a broad level. In reference to the layout of development it states that;

Layout of development - how the layout makes the development integrate with its surroundings whilst taking into consideration the orientation of

the building to maximise energy efficiency and connectivity (the ways in which routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development); how the external area contributes towards the development and is used to make the development a more sustainable development; how is the chosen site the best location and how it links into adjacent uses.

These issues and impacts are reiterated within Local Planning Policy contained within the Neath Port Talbot Unitary Development Plan.

Policy 5 provides the following overarching statement; *“The area’s built environment will be enhanced where appropriate and/or protected from proposals that would have unacceptable impacts on its character, appearance and on the quality of life”*

This overarching protection and enhancement Policy stance is further detailed in the following policies within the Plan;

POLICY GC1 – NEW BUILDINGS/STRUCTURES AND CHANGES OF USE

Any proposal involving new buildings, structures, change of use, extensions and alterations will not be permitted if it would create an unacceptable impact in failing to (inter alia);

(e) ensure that measures are taken to minimise the adverse impacts of the development on the character and townscape of the surrounding area including building densities, architectural styles, layout patterns, orientation of buildings, scale, height, mass and materials of nearby buildings, structures and infrastructure

(g) ensure that in residential developments, efficient use is made of the site in terms of the density of development including the size and footprint of the buildings, the extent of gardens and curtilages, and the amount and extent of parking and circulation space;

(h) ensure that the layout and design of the development achieves inclusive design.

(i) ensure that the proposal includes appropriate parking, servicing and access provisions and does not create unacceptable hazards or inconvenience for users of highways or rights of way;

(l) ensure that there are reasonable levels of privacy and amenity for occupiers of properties both adjacent to and within the site;

The explanation of this policy goes further to add that; while encouraging the full use of well located land, the Authority will resist proposals which would have unacceptable impacts on amenities and the quality of life for adjacent residents.

POLICY ENV17 – DESIGN

Any proposal that would include new construction or alteration to an existing building's appearance should be well designed. This will include whether it has: (inter alia)

- a) paid sufficient regard to the character of the area, and to conserve biodiversity and strengthen habitat connectivity;*
- b) ensured that its design and operation would not have any unsatisfactory impacts on the occupants of any other properties*

The explanation of this policy goes on to specify that:

Good design has a major influence on conserving and enhancing the character of an area and the quality of life for those using it. This can include not only the appearance of an area, but the enjoyment and quality of life of those occupying and using the properties. The character of the area could include the townscape, landscape or seascape and whether the area or setting retains a local character that it is desirable to protect or complement. It will include the layout, density, scale and setting of buildings, their relationship to each other, open spaces and natural features. A proposal should ensure that it would not create an unacceptable impact upon the occupants (or future occupants) of other properties.

Having regard to the above National and Local Planning Policy context, it is considered that the creation of a self contained residential dwelling in this backland location, including the insensitive sub-division of this plot, provides significant detrimental impacts not only to the occupiers of the existing dwelling through impacts upon their amenity, but also the amenity of future occupiers of the proposed dwelling, and the neighbouring properties. These matters are discussed further within this report.

It is clear that this form of “Tandem” development not only leads to the creation of unacceptable conflict and impacts upon residential amenity,

but also upon design, character, and visual amenity, as referred to both within National Planning Policy enshrined within Planning Policy Wales, and TAN 12: Design, but also within Local Planning Policy set out within the Neath Port Talbot Unitary Development plan.

Visual Amenity:

The introduction of a large-scale building within the rear garden of this existing dwelling significantly reduces the amenity space serving the dwelling, and therefore its setting and context. The building itself and the means of enclosure, at a height of 2.5m, within 3.6m of the main rear elevation of the original property restrains the outlook from the dwelling significantly, and alters the overall character and visual appearance of the plot to the detriment of visual amenity.

Whilst it is accepted that an outbuilding, incidental to the existing dwelling, could still have been accommodated within the rear garden, and that permitted development rights for such a building could have been used to provide a large detached outbuilding, the impacts of this building, and the means of enclosure to sub-divide and create a separate plot, exacerbate the loss of amenity space, and result in unacceptable impacts on amenity. By reason of its size and scale the building is also considered to exceed that which would be considered subordinate to the main dwelling, and fail to respect the character of the local area. The visual impact of this is significant when viewed from adjoining properties to the rear and to the east and west, resulting in a cramped and overdeveloped appearance to the detriment of the visual amenity of the area, which if copied, would further undermine the amenity of the area to the detriment of its character.

Planning Policy Wales, as stated previously concurs with this view; *Insensitive infilling, or the cumulative effects of development or redevelopment, including conversion and adaptation, should not be allowed to damage an area's character or amenity.*

As such, the building and the necessary means of enclosure to screen and sub-divide this plot and create two separate residential dwellings and curtilage provides a cramped and overdeveloped appearance to the detriment of the visual amenity and character of the area, and to the detriment of the amenity of adjoining properties. This would be contrary to Policy 5, Policies GC1 and ENV17 of the Neath Port Talbot Unitary Development Plan, and the principles of good design as set out within Planning Policy Wales, and TAN 12: Design.

Residential Amenity:

The impacts of the development upon residential amenity are interlinked, but can be separated out into the following three main issues.

Impacts upon the amenity of residents within the existing dwelling (39 Cimla Common)

The development of the building at this scale, and the means of enclosure, result in the loss of approximately 77% of the private amenity space serving the existing property, and results in a tight and controlled enclosure around the donor property. The previous 187.2 sq.m rear garden has as a consequence been reduced to less than 40 sq.m. private amenity area to serve the existing dwelling. Even having regard to the large front garden area, the remaining private area at the rear is considered to be insufficient to serve the dwelling, while the provision of a 2.5m high enclosure within 3.6m of the main rear elevation, significantly restrains the outlook and amenity space for this property, and provides a cramped overdevelopment of this plot to the detriment of the amenity of the existing and future occupiers of the existing dwelling.

The projecting wing of the new dwelling is located only 5 metres from the rear wall of no. 39 and at a level approximately 0.5m higher, beyond a 2.5m high timber enclosure. The proximity of this part of the dwelling is considered to accentuate the impacts on the existing dwelling and reduced amenity area.

Access to this plot is via a pedestrian access only, and therefore any additional movement past the existing dwelling would be restricted to pedestrians. As stated previously, Planning Policy Wales states that *'tandem' development, consisting of one house immediately behind another and sharing the same access, may cause difficulties of access to the house at the back and disturbance and lack of privacy to the house in front, and should be avoided.* Nevertheless, it is considered that the impacts arising from such pedestrian movements, even having regard to the provision of parking fronting the existing dwelling, would not be sufficient to conclude that there would be an unacceptable impact by reason of such movements.

Impacts upon the amenity of the proposed dwelling.

The amenity of residents within this proposed dwelling needs to be considered. The provision of a self contained dwelling in such close proximity to an existing dwelling is considered to be unacceptable, and raises concerns over the potential conflict between occupiers.

Whilst the applicant states that they originally envisaged the building being used as an annexe, or as overspill accommodation for the existing dwelling, they now propose this to function as a self contained dwelling house. As such the need for permanent sub-division and physical screening, through the erection of screen boundary treatments, constrains and defines the separation of the plot. This not only exacerbates the cramped and overdeveloped appearance, but also provides limited amenity space to serve the proposed dwelling. This, together with the limited and constrained access, is considered to provide unacceptable conditions to operate as a residential unit without conflict.

Impacts upon the amenity of adjoining residents.

It is considered that whilst a building ancillary to the existing dwelling in some form may be acceptable, the creation of a self contained dwelling will have detrimental impacts upon the amenity of adjoining properties through the additional disturbance. Access is limited, and any occupiers will have to access the site via the footway subdivided from the existing plot. This additional use is considered to be unacceptable, and over and above that that would be acceptable and expected. The impact of the self-contained use are exacerbated by the size and scale of the detached building in the rear garden close to the joint boundary with the adjacent dwelling.

Highway Safety (e.g. Parking and Access):

The proposed dwelling has been provided with one off street car parking space, located to the front of the site, in front of the existing dwelling.

The Head of Engineering and Transport, Highway Section offer no objection in relation to highway and pedestrian safety, subject to conditions. These include the requirement for a minimum of two off street car parking spaces to serve the new property.

Whilst it is considered that there is sufficient space within the curtilage of the existing property to provide two off street car parking spaces to serve the new dwelling, these would extend outside of the planning application

boundary, and into the land edged blue, that is currently proposed to be retained by the existing dwelling No 39. Nevertheless, while this could increase the impact on the host dwelling, such matters could have been dealt with by condition in the event the application was being recommended for approval.

Conclusion:

It is considered that the introduction of a self contained residential dwelling within the rear garden of this existing residential dwelling would create “Tandem” development that would result in unacceptable detrimental impacts upon the amenity of adjoining residential properties, the amenity of the occupiers of the existing dwelling and occupiers of the proposed dwelling. This would be from both the physical development including the building and the means of enclosure required to subdivide this existing plot, and from the additional disturbance from the creation of a self contained plot in the rear garden. As such it is considered that the development is Contrary to Policies GC1 and ENV17 of the Neath Port Talbot Unitary Development Plan, and contrary to the principles of good design as set out within Planning Policy Wales and Technical Advice Note 12: Design.

Enforcement

Having come to the conclusion above that the retention of the building as a dwelling is unacceptable, it is necessary to consider the expediency of taking formal enforcement action to mitigate the current breach of planning control.

It is first necessary to identify that the breach of planning control is the “construction of a new dwelling without the benefit of planning permission”. It cannot be argued that the building was constructed as ‘permitted development’ because the building was constructed as a self-contained dwelling, with permitted development rights only applying to uses incidental to the main dwelling. Accordingly, Members should note that any Enforcement Notice can require the whole building to be removed and the land restored to its former use as garden serving no. 39.

In taking formal enforcement action, however, it is necessary to consider the harm caused by the development and to ensure that any action taken is proportionate and appropriate to mitigate against the identified harm. It is also appropriate to consider any ‘fall-back position’, including in this case the permitted development rights for outbuildings in rear gardens.

Having regard to the above, it is clear that the use as a dwelling is wholly unacceptable and enforcement action is necessary to preclude such use continuing, while ensuring that the amenity space is restored for use by the host dwelling and impacts on surrounding properties are minimised. Accordingly, it is recommended that formal action is taken through service of an Enforcement Notice which should not only require cessation of the use as a separate dwelling, but also the removal / reinstatement of other works including the removal of all boundary treatments erected on site that sub-divide the plot into two separate plots, and the removal of all meters and individual services supplying the property (such services to be restored to a single supply as for the existing dwelling at 39 Cimla Common).

In addition to the use, it is necessary to consider the physical impact of the building, and in this respect it is considered that the size and scale of the building as constructed is inappropriate, with its substantial size taking up a significant part of the rear garden and the size of the building amounting to a development which is clearly not subordinate to the host dwelling in size or scale. As a consequence it is harmful to the character of the area.

In terms of any 'fallback' position, it is noted that the building cannot be claimed to have been built under the 'old' householder permitted development rights because it has not been constructed or used as accommodation incidental to the main dwelling. In addition, under the 2013 changes to householder permitted development rights, even if the building had been constructed for a use 'incidental' to the main dwelling (for example storage, summer house, gym etc), it would not be permitted development due to its height and proximity to boundaries. Accordingly, it is considered that there is no reasonable fallback position which would have allowed this building to be constructed.

Notwithstanding the above, it is considered reasonable to consider whether any building to the rear would be granted planning permission had such an application have been submitted to the Council. In this respect, while the current building is considered to be excessive and harmful in size/scale, a smaller building would most likely have been acceptable, even if proposed to be used for ancillary accommodation. Accordingly, it is considered that any Notice could choose to *under-enforce* against the breach, by allowing the retention of part of the building. In this respect it is considered that the removal of 3.5m of the existing front-projecting 'wing' (reducing its depth from 4.8m to 1.3m but allowing the owners to retain a gable) would reduce the size and apparent scale of the building so that it would then appear subordinate in

size and scale to the host dwelling, and minimise the impact on adjoining properties and the wider area. This is considered to amount to a reasonable and appropriate action proportionate to the breach of planning control, which does not unnecessarily punish the offender but seeks to mitigate the breach of planning control in the wider public interest.

While the use of this reduced building should ideally be only for purposes incidental to the main dwelling, it is further considered that its use for overspill accommodation (e.g. bedroom, lounge area etc) would not in itself create any unacceptable impacts on neighbouring properties or increase the impact of the development on the wider area. Accordingly, the enforcement action can be worded to allow for such uses should the owner wish.

Accordingly, the recommendation below incorporates an additional request that enforcement action is authorised in accordance with the above assessment. Members should note, however, that the recommendation requires either the demolition of the building and restoration of the site to its former condition OR works in accordance with the above.

RECOMMENDATION: Dual Recommendation

A) That planning permission is REFUSED on the following grounds: -

(1) By reason of its size and scale, its backland location and the subdivision of the existing rear garden serving no. 39 Cimla Common, the proposed new dwelling would amount to a cramped form of overdevelopment which fails to respect the character and pattern of development within the area, contrary to Policy 5, Policies GC1 and ENV17 of the Neath Port Talbot Unitary Development Plan, and the principles of good design as set out within Planning Policy Wales, and TAN 12: Design.

(2) The proposed new dwelling has resulted in the loss of a substantial part of the existing rear garden serving no 39 Cimla Common which, together with the means of enclosure that subdivide this existing plot and create two separate residential dwellings, and the proximity of the dwelling to the existing property, result in an unacceptable impact upon the residential amenity of residents within the existing dwelling, contrary to Policy 5, Policies GC1 and ENV17 of the Neath Port Talbot Unitary Development Plan, and the principles of good design as set out within Planning Policy Wales, and TAN 12: Design.

B) That authorisation is granted to take formal enforcement action by the service of an Enforcement Notice requiring the following;

Either:

1. The demolition of the building and restoration of the site to its former condition;

Or

1. The cessation of use as a self-contained residential unit;
2. The removal of all kitchen units and equipment;
3. The removal of all meters and individual services supplying the property, and that if any services are to be retained that these are connected to the meters within the existing dwelling, known as Crossways, 39 Cimla Common only.
4. The removal of all boundary treatments erected on site that subdivide the site into two separate plots.
5. Demolition of a 3.5m section of the building from the wing projecting towards no. 39 Cimla Common, and reinstatement of a blank, rendered gable;
6. That the building as altered shall not be used for any purposes other than those incidental to the use of the existing dwelling, known as Crosswinds, No 39 Cimla Common.