

SECTION B – MATTERS FOR INFORMATION

APPEALS DETERMINED

a) Planning Appeals

Appeal Ref: A2016/0007 **Planning Ref:** P2015/1081

PINS Ref: APP/Y6930/A/16/3150581

Applicant: Mrs Linda Rees

Proposal: Removal of conditions 1, 2 and 3 of planning permission P2015/1081 approved on 27/04/16

Site Address: Crosswinds 39 Cimla Common

Appeal Method: Hearing

Decision Date: 13/10/16

Decision Code: Allowed
(Costs also awarded against the Council)

The appeal was against a number of conditions imposed on a grant of planning permission for an outbuilding at the above site which, in summary, required: - removal of separate electricity meter and gas meter; that the building shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 'Crosswinds' 39 Cimla Common, and shall not be sold, let or sublet as a separate unit of accommodation; and the use of a defined area within the building for storage purposes only in association with the dwellinghouse.

Condition 2: While the Inspector and appellant agreed that a condition restricting the use of the residential annex to purposes ancillary to the host dwelling was necessary, the Council's condition included amendments to the 'model condition' to restrict the selling, letting or subletting of the annexe as a separate unit of accommodation.

The inspector advised that restriction on sale, such as it relates to the ownership of and transfer of land, extends beyond the proper use of conditions and in any event largely replicates the signed Section 106 agreement which seeks to achieve similar, and to which he attached significant weight.

Whilst he accepted that the access, size and facilities of the annexe mean that it could be used independently from the main dwelling, he stated that its use as a let or sublet unit of accommodation that is independent of the main dwelling would require a separate planning permission. He therefore concluded that the additional restriction was not relevant to the permitted use.

Condition 3: This condition sought to ensure that one room within the property is used only for storage. It was the inspectors view that it would not be possible to enforce such a condition other than by routine inspection, the inspector concluded that the condition was neither necessary nor reasonable in order to avoid harmful effects, and moreover it was not enforceable.

Condition 1: This condition related to the removal of the gas and electricity meters. The inspector did not dispute that the separate meters facilitate the independent use of the annexe, indeed that is what was intended, but considered that it does not necessarily follow that the meters themselves, even in combination with the other conditions, automatically result in the creation of an unpermitted primary residential unit. The inspector stated that *“condition No 2, as proposed, would by itself provide the necessary certainty and clarity as to the permitted use of the annexe, and any reported breach of the condition could be ascertained via the Council’s normal enforcement procedures.”* The inspector therefore concluded that the nature of the development subject to the planning permission did not justify Condition No 1, and it was therefore not relevant or reasonable.

The inspector thus concluded that the conditions were not reasonable or necessary to provide satisfactory living conditions for occupants and neighbouring occupiers or to avoid harm to the character and appearance of the area, subject to their replacement with the model condition in the Circular to restrict the use of the annexe to purposes ancillary to the host dwelling.

Application for costs

At the Hearing an application for costs was made against the Council.

The inspector concluded that the Council's decision to grant planning permission subject to the three disputed conditions was unreasonable and resulted in an appeal which should not have been necessary. Consequently he considered the Council had shown unreasonable behaviour resulting in unnecessary or wasted expense, as such a full award of costs was justified.

The applicant has been invited to submit details of those costs with a view to reaching agreement as to the amount.

b) Enforcement Appeals

Appeal Ref: A2016/0008 **Planning Ref:** P2015/0495

PINS Ref: APP/Y6930/A/16/3150026&3150027

Applicant: Mr Ashley Rees & Ms Milena Anna Williams

Alleged Breach: Change of use from a residential dwelling (Class C3) to mixed use of residential dwelling (Class C3) and commercial use for the provision of music lessons (sui Generis)

Site Address: 26 Rowan Tree Close, Bryncoch

Appeal Method: Written Reps

Decision Date: 05/10/16

Decision Code: The appeals fail insofar as they relate to ground (e), nevertheless, the appeal under ground (a) is ALLOWED, the enforcement notice quashed and planning permission granted

The appeal was made under three separate grounds (a, e and f) which will be looked at in turn in the order of the decision.

The appeal under ground (e)

The appeal under ground (e) was that copies of the notice were not correctly served as required by section 172 of the aforementioned Act. The appellants reasons on this ground was two pronged;

- The Council had not correctly identified the planning unit or land affected by the notice by failing to include within the plan attached to the notice the shared access to the site.
- The plans on one of the enforcement notices were considered illegible.

The inspector noted that whilst the shared access road does provide for the sole vehicular access to the appeal premises, the breach of planning control quite clearly relates to the music lessons being offered specifically at No.26. The plan accompanying the enforcement notice is consistent with the registered title at the property. As such, for the purposes of determining these appeals, he was satisfied that the Council had correctly identified the site.

In relation to the plan, the Inspector noted that there is no formal requirement for an enforcement notice to include a plan, and the postal address was clearly provided within the notice. Notwithstanding such matters, section 176(5) of the Act states that incorrect service of an enforcement notice may be disregarded where there has not been substantial prejudice. In this case, the appellants have lodged appeals against the enforcement notice and managed to contest it fully through the course of proceedings. It cannot, therefore, be said that they have suffered any prejudice.

The inspector therefore concluded for the above reasons that the appeals under ground (e) should fail

The appeal under ground (a) – that planning permission ought to be granted

The main issue for consideration concerned the hours and intensity of the operation, as well as the noise generated from the lessons themselves, as they could have potential to cause material harm to the living conditions of the occupiers of neighbouring

properties. The Inspector noted that such matters are of particular concern in this case given the small and intimate character of the residential cul-de-sac within which the appeal site is located.

As set out in the requirements of the enforcement notice, the Council consider that the impacts of the use would be acceptable if, amongst other things, the number of students were restricted to a maximum of 6 per day and the hours of operation restricted to between 09.00 and 20.00 hours Monday to Friday and 09.00 and 15.00 hours on Saturdays, with no lessons offered on Sundays and Bank Holidays.

In contrast, whilst the appellants are happy to agree to no lessons on Sundays or Bank Holidays, they wish to be able to operate the business use between 10.00 and 21.00 hours Monday and Friday and 10.00 and 15.00 hours on Saturdays. The appellants also seek to be able to teach up to 10 students per day.

The inspector noted that the restrictions set by the Council in respect of the numbers of students represent a pragmatic and proportionate approach relative to the concerns raised. Specifically, he considered that the impacts associated with 6 students per day within the hours specified by the Council would be materially different to the 10 students per day proposed by the appellant. Indeed, the latter could result in some 20 comings and goings over the course of a typical weekday which, in addition to the movements associated with the residential use of the property, would be excessive given the local context.

He recognises that the appellant sought to limit the numbers of vehicles accessing the site. However, the condition proposed would be extremely difficult, if not impossible, to enforce and, for this reason, he determined that it fails the tests set out in Welsh Government Circular 16/2014: *'The Use of Planning Conditions for Development Management Purposes'*.

The inspector considered the Council's suggested operating hours to represent a balanced and sociable period within which any lessons should take place. Indeed, in light of the concerns outlined above he felt that the 20.00 hour restriction on a weekday to be an absolute necessity if the levels of harm are to be mitigated to an acceptable level.

In addition, as proposed by the Council and the appellant, a condition is necessary to ensure that the lessons are only offered by the owner or occupier of the property and that no other persons are employed at the premises. Likewise, he imposed a condition restricting the music lessons to the provision of guitar lessons only. These controls would assist in ensuring that the change of use at the property would not cause material harm to the living conditions of neighbouring occupiers.

The inspector deemed the element of the notice to prevent any other business uses from operating at the property went beyond remedying the breach of planning control.

Accordingly, while technically upholding all of the Council's concerns the Inspector considered the most appropriate way of controlling the use would be to grant planning permission (and thus quash the Enforcement Notice) subject to conditions

The Appeals under Ground (f)

In light of the inspector's conclusion that the appeal should succeed on ground (a), the enforcement notice is quashed. As such, the appeals under ground (f) did not need to be considered.

Conclusion

Whilst it is noted that the Enforcement Notice was quashed and planning permission granted, it is emphasised that the planning conditions imposed by the Inspector essentially replicate (with one minor change) those controls which were sought through the Enforcement Notice. The outcome of the appeal will therefore successfully remedy the breach of planning control (provided such conditions are adhered to).

Application for costs

It is noted that an application for costs was made the Council, however we have not received the outcome of this application to date.