SECTION B – MATTERS FOR INFORMATION

APPEALS DETERMINED

a) Planning Appeals

Appeal Ref: A2017/0004 **Planning Ref:** P2016/1051

PINS Ref: APP/Y6930/A/17/3170180

Applicant: Mr Ashley Rees

Proposal: Variation of condition 1 and 2 of planning permission (ref APP/Y6930/C/163150026 which granted a mixed residential Class C3 and music lesson sui generis use) approved at appeal on 10th October 2016 to increase number of student to 8 and change hours of operation to 12.00hrs to 20.30hrs Monday to Wednesday, 12.00hrs to 20.00hrs Thursday and Friday and 09.00hrs to 15.00 on Saturdays

Site Address: 26 Rowan Tree Close, Bryncoch

Appeal Method: Written Reps

Decision Date: 14/06/2017

Decision Code: Dismissed

Members will be aware that the Local Planning Authority (LPA) has been involved with the issues relating to noise and disturbance as a result of the music lessons at this site for over 30 months. The previous appeal (ref APP/Y6930/C/163150026) allowed the use of the site for music lessons however restricted the number of students per day and hours of operation to ensure the development was acceptable in terms of noise and disturbance. The applicant applied to vary these where it was refused at planning committee on 14th February 2017 as it was considered unacceptable in terms of residential amenity.

The main issue concerned the effect amending the conditions would have upon the living conditions of neighbouring occupants, with particular regard to noise and disturbance.

The Inspector noted the previous Inspector's findings, with no material change in site circumstances since then for him to disagree with the previous Inspector's conclusions, giving this considerable weight in making his decision.

The Inspector stated while an increase in hours would have the potential for only one additional vehicle entry and exit 3 days per week, this would occur during the quiet evening hours and, given the local context, would be significantly intrusive on a regular basis. He also stated that increasing the number of students from 6 to 8 would lead to a corresponding increase in potential vehicle movements from 12 to 16 daily.

Whilst modest in number the increase would be proportionality significant and, given the intimate scale of the cul-de-sac, would lead to a level of noise and disturbance that would be materially greater than a typical residential use. He further considered the proposed reduced weekday operating period of 8 or 8.5 hours would have the potential to increase the intensity of the use and considered that the harm associated with this would offset any benefits derived from the later start time of 12.00.

The inspector also made reference to the allegations that over 6 students per day have been taught from the property in excess of 30 months, with records of activity supplied by residents. Although there is no way of verifying the accuracy of these records, he considered the fact that the Council has been engaged in enforcement action for some time lends credence to the claim that the intensity of activity at the property has been at an unacceptable level for a substantial period.

The Inspector concluded that a temporary variation of the proposed conditions would only exacerbate the harm caused and would, as a result, not be acceptable. He also stated that, based on the financial information supplied, it would be unlikely that the additional income generated over a period of 3 to 6 months would be sufficient to secure the relocation of the business and that the potential benefits of a temporary variation would not outweigh the identified harm.

The inspector therefore concluded that the appeal should be dismissed and the conditions retained in their present form.

Appeal Ref: A2017/0003 **Planning Ref:** P2016/0522

PINS Ref: APP/Y6930/A/17/3168488

Applicant: Mr Gareth Morgan

Proposal: Detached two storey dwelling with off street car parking (outline with all matters reserved)

Site Address: 9 New Road, Trebanos

Appeal Method: Written Reps

Decision Date: 08/05/17

Decision Code: Dismissed

The main issues concerned the effect of the development on the character and appearance of the area and its effect on the living conditions of neighbouring residents and the lack of a coal mining assessment.

On the first issue, the inspector found there to be a diversity of designs within the area. Nonetheless, most properties have a wide, horizontal emphasis in their frontages and are set in spacious plots with many having defined frontages bordered by traditional walls. Those with off road parking generally have a driveway to the side of the property.

The appeal site is considerably narrower in width than those in the vicinity and the indicative plans show a very narrow building with a vertical emphasis that would be in direct contrast with the properties in the area. The indicative plans also show two parking spaces provided to the front of the dwelling. This would necessitate any dwelling being positioned further back on the plot than the frontage of the adjacent dwellings.

The frontage of the proposed dwelling would be dominated by the parking spaces, and the Inspector found this would be an incongruous layout that would be in contrast with other properties in the locality that have front gardens and forecourts that provide a visual break between the street and houses. The Inspector concluded that the proposal would be harmful to the character and appearance of then area.

In respect of living conditions, the main concern related to the effect of the dwelling on the living conditions of the occupants of No 11 to the north-east. Due to the orientation of the proposed dwelling and its close proximity to No 11 he considered that the proposal would result in the loss of a significant amount of light entering the adjacent property, in particular into its ground floor rooms. It would also significantly overshadow the outside decking area. The proximity of the proposed dwelling and its orientation to No 11 would also give rise to an overbearing and oppressive impact that would be harmful to the living conditions of No 11's occupants.

The Inspector noted that a Coal Risk assessment had been submitted with the appeal, which was sufficient to meet the requirements of PPW in demonstrating that the site is safe and stable for the proposed development. As such the Coal Authority withdrew its objection to the proposal.

Planning Ref: P2016/0117 and P2016/0254

PINS Ref: APP/Y6930/A/16/3159310 and APP/Y6930/A/16/3159312

Applicant: Waterstone Estates

Proposal: 'Appeal A' - Road Side Service Area comprising petrol filling station and kiosk, drive thru coffee shop, car parking, access, landscape and associated works.
'Appeal B' Pub/restaurant , access, car parking and associated works

Site Address: Land at Glynneath Business Park, adjacent to A465, Glynneath.

Appeal Method: Hearing

Decision Date: 7th April 2017

Decision: Both Appeals Dismissed
Application for Award of Costs against Council Refused

The main issues were whether the proposed developments complied with local and national policy designed to restrict new development outside defined settlement limits; Policy related to new retail development and the effect of the proposals on the vitality and viability of the Glynneath district centre; and if the proposed developments fail to accord with policy set out in the first two issues, whether there are any material considerations that would outweigh any harm identified in relation to other main issues.

Om the first issue, the Inspector found the site to lie outside of the settlement boundary, and to neither constitute a small-scale employment use or lie adjacent to the settlement boundary. She also agreed with the council that the proposal was not 'infrastructure'. Accordingly the proposal failed to comply with Policy SC1 of the LDP.

In terms of retail impact, the Inspector noted that Policy R3: *Out of Centre Retail Proposals* sets out criteria for retail developments outside designated town centres. However, its permissive effect does not extend beyond the defined limits of settlements. It follows that the proposal conflicts with the LDP retail policies. She also stated that whilst it is difficult to ascertain the degree of potential retail impact, it was reasonable to conclude that there would be some trade diversion, as acknowledged by the appellant in their retail statement. In addition, the retail need identified in the LDP can be met by a sequentially preferable site in accordance with the approach set out within PPW.

She thus concluded that the appeal proposals fail to accord with policy R3 of the LDP and the advice set out within PPW in relation to the location for new retail development and would be harmful to the vitality and viability of the Glynneath district centre.

In considering other material considerations, the Inspector noted that whilst the developments may bring some potential benefits, the appellant has failed to demonstrate that these benefits are sufficient to outweigh the harm identified.

Taking into account all matters raised, the Inspector thus concluded that both developments would be contrary to local and national Planning policy and the material considerations presented by the appellant do not outweigh the policy breaches.

b) Enforcement Appeals

Appeal Ref: A2016/0010 & 0011

PINS Ref: APP/Y6930/C/16/3156920 & C/16/ 3156925

Applicant: Appeal A – Douglas Price
Appeal B – Brian Price

Alleged Breaches of Planning Control:

'Appeal A' Without planning permission, the construction of a replacement two storey dwelling

'Appeal B' Without planning permission, the siting of a static caravan on the land, in the approximate position marked with a cross on the plan, and its use for residential purposes

Site Address: Aberdrychwallt Farm, Pontrhydyfen, Port Talbot SA12 9SN

Appeal Method: Public Inquiry

Decision Date: 15th June 2017

Decision: Appeal A ('Caravan A) – Allowed
Appeal B ('Caravan B) - Dismissed

Appeal A

Given the nature and scale of unauthorised development undertaken, the Council's Enforcement Notice was directed against "construction of a replacement two storey dwelling". Following his review of evidence, the Inspector concluded that the development that had taken place comprised the "alteration and extension of an existing dwelling house" rather than the construction of a replacement dwelling.

The key policy therefore concerned LDP Policy EN5 (Conversion and Extension of Existing Buildings in the Countryside), whose supporting text states that extensions to buildings that are existing dwellings in the countryside should be limited in size to ensure that the form and character of the original building is not adversely

affected. The supporting text goes on to say that the size of extension likely to be acceptable will depend on the circumstances of each individual case, but extensions should not normally exceed the overall dimensions or cubic content of the original building by more than 20%.

The Inspector reviewed evidence and noted that however it was assessed (whether based on overall dimensions or on the basis of cubic content), there was no doubt that the extent of enlargement of the original building far exceeds the 20% indicated as normally allowable within the terms of policy EN5.

Notwithstanding this, the Inspector noted a number of other considerations in this case that he deemed relevant, including: -

- the standard of accommodation afforded by the original dwelling was plainly far from satisfactory, in terms both of structural quality and the limited amount and poor arrangement of living space for its occupants, which include two teenage children;
- The external appearance of the original flat-roofed structure was indisputably poor, and clearly detracted from the character and appearance of its surroundings.

He stated that, whatever the means by which the original dwelling came about, it benefitted from a certificate of lawfulness. Much of the degree of enlargement that has occurred is attributable to the formation of the pitched roof over the structure, which in his view considerably enhances the building's appearance.

Notwithstanding the degree of enlargement concerned, he thus considered that the resulting building sits comfortably in its surroundings and does not appear out of scale within the grouping of the farmhouse and other farm buildings to which it belongs. Although a public right of way passes the site, he did not consider that the development caused any harm to public amenity. Given the poor external appearance of the pre-existing dwelling, the changes to the building's appearance, if anything, represent an improvement to the character and appearance of the locality rather than having an adverse effect.

Moreover, in the particular circumstances of this case, he also had regard to the evidence concerning the best interests of child "X" who has needs arising from his position within the autistic

spectrum. Whilst the medical and educational evidence before did not show a definitive requirement in these terms for the amount of additional living space that the loft area would provide, it was nonetheless sufficient to persuade the Inspector that permitting the development would undoubtedly be in X's interests, given the additional space to himself within the home. He noted that the courts have established that the interests of a child, where relevant to a decision, should be a primary consideration; he therefore gave significant weight to such interests here.

In concluding on such matters, he stated that "drawing all of the foregoing together I conclude that whilst the extension and alteration to the dwelling which has been carried out plainly exceeds the physical limitations indicated by Policy EN5, the development causes no harm to the character and appearance of its surroundings or to the wider countryside. Taking into account the resulting improvement in the standard of living accommodation provided and the acceptability of the development in design terms, together with the benefits in particular for child X, I consider that material considerations exist in this case which are of sufficient weight to indicate a determination other than in accordance with the development plan".

Accordingly, the appeal on ground (a) succeeded, the Enforcement Notice was quashed and planning permission granted for the development to which the Notice relates.

Appeal B

The appeal in respect of 'caravan B' involved many legal arguments following extensive evidence at Public Inquiry, the conclusions on which are best read in full in the Appeal Decision Letter.

In very broad terms, however, the Inspector's conclusions are summarised below: -

The ground (c) and (d) appeals

The basis of an appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control (for example because permission has already been granted, or the development is "permitted development"). The basis of a ground (d) appeal is that, at the time the enforcement notice was issued, it

was too late to take enforcement action against the matters stated in the notice.

On these points the Inspector concluded that: -

- *Operational Development or Material Change of Use?* As a matter of fact and degree, the breach of control in this case constitutes the use of land for the stationing of a caravan for residential purposes, and that the extent of the operations associated with the affixation of the caravan to the land is not such as to change the nature of the resulting structure to that of a building. Accordingly, the relevant time period against which to consider the question of immunity from enforcement action is 10 years rather than 4 years.
- Having regard to the totality of evidence, it has not been shown, on the balance of probability and as a matter of fact and degree, that Caravan B2 has immunity from enforcement action by virtue of the earlier existence of Caravan B1.
- On the evidence provided any lawful residential use of Caravan B1 by virtue of continuous use over a 10 year period between 1982 and 1993 was subsequently abandoned by reason of the conscious decision by Douglas Price to move out of Caravan B1 and into Caravan A, and to use Caravan B1 primarily for storage of equipment and materials from 1993 to 1999. The evidence concerning Jason Price's occupancy of caravan B1 between 1999 and early 2012 is insufficient to show continuity of residential use for a ten year period during this time.
- Furthermore, the evidence concerning the physical state of Caravan B1 by the summer of 2011 lead him to conclude that during the latter part of the aforementioned period the condition of Caravan B1 had deteriorated to the point where its occupation as a place of residence was unfeasible.
- Grounds (c) and (d) therefore did not succeed.

In respect of *Ground (a) and the deemed application for planning permission* the Inspector concluded that :-

- Whilst the appellant may well prefer to reside in a caravan at Aberdrychwallt and so be closer to his work and other family members, ultimately these are matters of personal preference and convenience rather than necessity. Personal

circumstances will rarely outweigh conflict with planning policies which operate in the wider public interest.

- In this case the siting of a residential caravan in this location plainly conflicts with LDP policies SP3, SP14 and SC1. It erodes the character and appearance of the countryside and comprises residential development in a location unrelated to local service and facilities, without adequate justification. The development thus runs counter to basic sustainable development principles.
- The personal preference of the appellant and the convenience which the caravan provides in relation to his involvement in the operation of the enterprise at Aberdrychwallt are not matters of sufficient weight to justify the clear breach of development plan policies and harm to the character and appearance of the countryside that permitting an additional residential unit in this location would represent.
- Overall, the interference with the appellant's exercise of his human rights that would result from upholding the enforcement notice is justified and proportionate to the public interest objectives of safeguarding the environment and regulating the spatial distribution of new development so that sustainable development principles are adhered to, which is allied to the country's economic well-being.

The ground (g) appeal – relating to time limit for compliance – was also dismissed, with the Inspector concluding that no practical reason had been given why the 6 month period given was not sufficient for the appellant to find alternative accommodation and for the caravan thereupon to be vacated and the other requirements of the notice carried out.

Balancing the need to have regard to the appellant's circumstances against the public interest in implementing enforcement processes directed at remedying planning harm without undue delay, he thus concluded that 6 months is an appropriate compliance period.

The appeal was therefore dismissed and the Notice upheld without modification.

Summary of Decision

Appeal A - The Inspector ALLOWED the appeal (and quashed the Enforcement Notice), thus granting planning permission for the 'extensions and alterations' to the caravan to be retained. A condition was imposed requiring the works to be completed within 6 months.

Appeal B - The Inspector has DISMISSED the appeal and upheld the Enforcement Notice without variation. This means that the owner needs to "cease use of the caravan for residential use; remove the caravan and associated domestic structures from the land; and restore the land to its former condition by the use of topsoil and grass seed, including removal of all hardcore/materials used for a hardstanding and access to the land" within 6 months (i.e. by no later than 15th December 2017).