SECTION B – MATTERS FOR INFORMATION

APPEALS DETERMINED

a) Planning Appeals

Appeal Ref: A2018/0008 **Planning Ref:** P2017/0949

PINS Ref: APP/Y6930/A/18/3195317

Applicant: Mr Brian Shepherd

Proposal: Detached 3 Bedroom Bungalow And Detached Garage

Site Address: Glyn Clydach Hotel Longford Road Longford Neath SA10 7AJ

Appeal Method: Written Representations

Decision Date: 25th May 2018

Decision: Dismissed

Appeal Decision Letter

The Inspector considered the main issue of the appeal to be the effect of the proposed development on the character and appearance of the area; and the effect of the proposed development upon the openness of the Green Wedge, including whether any identified harm would be clearly outweighed by very exceptional circumstances.

The appeal relates to part of the extensive grounds associated with the Glyn Clydach Hotel, lying outside of the settlement limits defined by Policy SC1 of the Local Development Plan. The Inspector found no evidence to indicate that the 3 bedroom bungalow proposed in this case would satisfy the policy exemptions provided under Policy SC1.

The dwelling is proposed as a residence for the hotel manager, with commuting distances and hotel security advanced as material considerations in favour of the development. The appellant contended that the dwelling would comprise a rural enterprise dwelling, thereby satisfying the requirements of criterion (6) of

Policy SC1 and Technical Advice Note 6: *Planning for Sustainable Rural Communities* (TAN6). However, despite the fact that the occupation of the dwelling would be restricted to the hotel manager, the Inspector found no evidence to indicate that it would in fact represent a rural enterprise dwelling as defined by national planning policy. In coming to this conclusion, the Inspector was mindful that land ownership arrangements and the existence of a business are not by itself sufficient to justify a rural enterprise dwelling. It therefore followed that the 'functional need' for the dwelling was not satisfactorily demonstrated, whilst the evidence relating to the 'time', 'financial' and 'alternative dwelling' tests referred within TAN6 is also lacking.

While the application site forms part of the curtilage of Glyn Clydach Hotel, the appeal proposal would extend the built form into an area of open and greenfield land. The dwelling would also be sited on land that slopes away from the hotel car park and, in this respect, there is little doubt that, despite its modest scale, the proposed dwelling and associated residential use of the land would injuriously alter the rural and unspoilt characteristics of the immediate environs. Although the wider field within which the dwelling would be located is bordered by mature trees and hedgerows and mean that the development would not be visually prominent, nevertheless Planning Policy Wales is clear that the fact that a single house on a particular site would be unobtrusive is not in itself a good argument in favour of permission being granted, not least because such permissions could be granted all too often to the overall detriment of the character of an area.

The appeal site is also located within a green wedge designation as defined by Policy EN3 of the adopted LDP, which seeks to prevent the coalescence of settlements and to protect the setting of urban areas. Policy EN3 clarifies that there should be a presumption against inappropriate development within the green wedge whilst PPW, which sets out national policy relating to green wedges, specifically states that the most important attribute of green wedges is their openness. PPW goes on to state that within such areas there will be a presumption against inappropriate development which, by definition, would be harmful to a green wedge designation.

Having regard to the advice contained within PPW, the Inspector concluded that the development falls within the category of

inappropriate development, and that it therefore follows that the development would be harmful to the green wedge designation, and would undermine its characteristics. While recognising that the development would not be of a scale that would result in the merging of nearby settlements, by failing to maintain the openness of the green wedge the development would run counter to the legitimate aim of preventing coalescence and protecting the setting of urban areas. As prescribed by PPW, substantial weight should be attributed to such harmful impacts to the green wedge.

PPW advises that planning permission for inappropriate development should not be granted except in very exceptional circumstances where other considerations clearly outweigh the harm which such development would do to the green wedge. Much of the appellant's case in this respect turns on the fact that a dwelling in the location proposed would provide security benefits and reduce the distances travelled by the hotel manager. However, whilst the sustainability arguments relating to reduced distances being travelled clearly weigh in favour of the development, the fact that staff would always be present at the hotel for it to effectively function means that limited weight should be attributed to the alleged security benefits. Moreover, the technical failures associated with security systems referred within the appellant's evidence could clearly be addressed outside of the planning process and do not, therefore, weigh heavily in favour of the development. It is on this basis that the Inspector found that the individual and cumulative arguments advanced in favour of the proposal fall considerably short of the very exceptional circumstances necessary to justify the development proposed.

The Inspector therefore concluded that the proposed development would represent an unjustified form of development within the countryside. The development would therefore be contrary to Policy SC1 of the adopted LDP and fail to comply with the provisions of TAN6. It would also cause harm to the character and appearance of the area and thereby conflict with LDP Policy BE1. Finally, as inappropriate development in the green wedge the development would fail to maintain the open nature and rural character of the area.

Appeal Ref: A2018/0007 **Planning Ref:** P2017/0445

PINS Ref: APP/Y6930/A/18/3194340

Applicant: Tolkein Ltd

Proposal: Residential development and alterations to existing access without complying with a condition attached to planning permission (ref: P2008/0798), dated 25 August 2016.

Site Address: Land at Forge Washery, Lower Brynamman SA18 1SW

Appeal Method: Written Representations

Decision Date: 1st June 2018

Decision: Allowed

Appeal Decision Letter

The main issue concerned the effect on highway safety of varying the disputed condition to permit the proposed revised access road arrangement.

The Council raised 2 concerns regarding the road layout proposed, one relating to the width of a section of the road in terms of allowing larger vehicles from passing parked cars and the other relating to the visibility splays that would serve a junction on to the proposed access road.

The highways officers maintained that the 5.5m width for residential roads set out in its Guide was the minimum which it considered acceptable in this instance. The Council's concerns related to a proposed narrower section of the road which would be at a point where the present parking of cars in association with the adjacent terrace of 3 houses is likely to continue. The presence of these vehicles on the proposed 4.8m wide carriageway would mean that the available width of the road would measure some 2.8m. The Council explained at the hearing that it had recently secured a fleet of refuse wagons that are larger than previously used and this was causing problems in passing through narrow streets, especially when restricted by the presence of parked cars.

The Inspector was advised that these vehicles are 2.5m wide and with their projecting mirrors measure 2.95m in overall width.

Two potential means of widening this narrower part of the carriageway were discussed at the hearing. Firstly, as suggested by the appellant in advance of the event, the proposed 2m footway could be reduced to 1.8m, which would accord with the width of the approved layout. Secondly, it emerged at the hearing that there was a strip of some 0.5m to 0.6m available along the south side of the carriageway which could be utilised, at least in part, to provide an overrun area for the widest vehicles to pass parked vehicles. It was agreed by the main parties that the precise details of how this modest widening could be achieved could be subject to discussions as part of the required detailed design work.

The Inspector considered such a requirement to be a reasonable one in the circumstances, and in light of the advice in Manuyal for Streets and MfS2 was satisfied that subject to this modest alteration that the layout of the road would ensure that it would effectively serve the proposed development, and that its narrowing would encourage lower traffic speeds than the previously approved scheme.

Turning the visibility splay along the proposed access that would be available for drivers emerging from the lane that serves half a dozen or so residences, the Inspector noted that the submitted scheme showed a visibility of 20m along the nearside of the carriageway from a 2m set-back. At the hearing the appellant confirmed that following further investigation and negotiation with land owners it was possible to provide larger visibility splays of 33m along the nearside carriageway from a set-back of 2.4m. This would be less than the distance set out in Annex B to Technical Advice Note 18: Transport.

Given the low volumes of traffic that would be using this junction, the low traffic speeds along the estate road that would arise in response to appropriate traffic calming measures the Inspector considered that this arrangement would be appropriate, having regard to the advice in MfS and MfS2.

He thus concluded that the modification of the condition to revise the proposed road access layout would not be detrimental to

highway safety. Thus there was no conflict with policies SP20, TR2 or BE1 of the Neath Port Talbot Local Development Plan.

The appeal was therefore allowed and outline planning permission granted for residential development and alterations to existing access at Land at Forge Washery, Lower Brynamman, SA18 1SW in accordance with the application ref: P2017/0445, dated 26 April 2017, without compliance with condition number 6 previously imposed on planning permission Ref P2008/0798 dated 25 August 2016.

Appeal Ref: A2018/0006 **Planning Ref:** P2017/0908

PINS Ref: APP/Y6930/A/18/3194340

Applicant: Mr Alexander Morris

Proposal: Two semi detached split level dwellings with associated car parking and engineering works.

Site Address: Site adjacent to 24 Curwen Close, Pontrhydyfen.

Appeal Method: Written Representations

Decision Date: 1st May 2018

Decision: Appeal Dismissed and Application for Costs Dismissed.

Appeal Decision Letter
Costs Decision

The proposal sought to address a previously dismissed scheme and stated that it would be a similar form and massing to an approved 3 storey detached dwelling and double garage that has now lapsed. However the Inspector considered that its overall massing and scale would have a dominating physical impact on the adjoining property (No. 24 Curwen Close) that would be overbearing and oppressive for its occupants, but did not consider that there would be any loss of privacy.

The Inspector also considered that the height and depth of the two storey dwelling, which would be higher and closer to the rear boundary than the lapsed scheme, combined with the volume of

the three storey element would still introduce a significant mass of built form across the site. Having regard to the differences in ground levels, and its proximity, it would be a very imposing form of development. In particular the outlook for the occupiers of Nos.19-20 would be dominated by built form in a way that would be oppressive and unneighbourly. For the above reasons the appeal was dismissed.

Application for Costs:

The Annex advises that substantive awards may be claimed where the unreasonable behaviour relates to issues of substance arising from the merits of the appeal or application. The Council's report clearly sets out the reasons for their concerns that the development would have an impact on the living conditions of nearby residents.

The Inspector considered that the scheme was different to a previously approved scheme which in any event had lapsed. Ultimately the Council's decision to refuse planning permission was based on the relevant development plan policy and evidence was provided to substantiate its concerns. The Council was not unreasonable in coming to its decision and there was no evidence to suggest that it has caused unnecessary or wasted expense in the appeal. An award of cost was not therefore justified.

Appeal Ref: A2018/0010 **Planning Ref:** P2017/0776

PINS Ref: APP/Y6930/A/18/3196014

Applicant: Mr John Matthewson

Proposal: Change of use of shop (A1) to residential dwelling (C3) and external alterations

Site Address: 101 Neath Road, Briton Ferry, SA11 2DQ

Appeal Method: Written Representations

Decision Date: 14th June 2018

Decision: Dismissed
Appeal Decision Letter

The main issue concerned the effect of the proposed development upon the vitality and viability of the designated retail centre.

The appeal relates to a mid-terraced property located along Neath Road in Britton Ferry which incorporates a mix of retail and residential uses, with a bakery currently operating at ground floor level, and located within the Briton Ferry District Centre, as designated by the Local Development Plan.

The appeal proposal sought planning permission for the change of use of the Class A1 retail unit to a Class C3 residential dwelling, with external alterations to the front elevation, and the Inspector stated that as the appeal proposal would replace an existing and operating retail unit with a residential dwelling, there was 'little doubt' that the development would fail to maintain or enhance the vitality and viability of the District Centre. Indeed, it would fail to strengthen the retail character of the area and fail to maintain a vibrant and attractive shopping frontage, contrary to the general aims of criterion 1 of Policy R2: *'Proposals within Retail Centres*' of the adopted LDP.

Criterion 2 of Policy R2 goes on to state that, proposals for the redevelopment or conversion of retail premises to uses not compliant with criterion 1 would only be permissible where: (a) it is demonstrated that the existing use is no longer viable or appropriate in the location; and (b) the proposal would not result in the loss of, amongst other things, a shop which is important in terms of providing facilities to serve the community. Alternatively, the change of use would be permissible under criterion 2(c) if the proposal would result in the redevelopment of derelict, unsightly, underused and vacant land. Criterion 3 sets out additional criteria that developments for non-A1 uses must adhere to within Primary Shopping Streets, whilst criterion 4 seeks to resist the over dominance of one use to the detriment of the vitality, viability and attractiveness of the retail centre.

Within this context, although the appellant contended that there is little demand for the retail offer and that, after years of service, the business is no longer financially viable, the Inspector noted that while a number of properties within the wider area are vacant, the business was operating at the time of his site visit, with the appellant's assertions regarding the viability of the business "largely unsubstantiated by cogent evidence".

Indeed, he noted that he had not seen any marketing evidence or financial accounts that would indicate that the retail uses permissible under Class A1 would be unviable at the appeal site.

He recognised the fact that there are other retail uses within the vicinity that sell bread and cakes and, in this respect, acknowledged the fact that the importance of the bakery to the community is a subjective matter. Nevertheless, it is the A1 use class that is protected by policy and he had little doubt that such retail uses generally represent important facilities for the community. As such, and bearing in mind the fact that the proposed residential use would fail to provide a commercial frontage that would contribute to the vitality and viability of the centre, he considered that it would be inevitable that the development would have a material adverse effect upon the retail function of the area.

The appellant's arguments that the dwelling would bring about regeneration and community benefits were noted, but nevertheless stated that the proposed development would not represent the redevelopment of a derelict, unsightly, underused and vacant property and, in this respect, such arguments merited limited weight in the planning balance. He also recognised the appellant's contention that the change of use would improve access to the existing residential use at the property. However, such matters did not outweigh the material harm to the vitality and viability of the retail centre that would arise should the appeal be allowed.

Indeed, he founds that the loss of a retail unit within such a location without proper and robust justification would run counter to the general thrust of the retail strategy set out within the adopted LDP, including Policy R2 as set out above. It would also run counter to the planning policy framework set nationally1 and the general thrust of Policy SC2 of the adopted LDP which broadly seeks to '*Protect Existing Community Facilities'*. For these reasons, and having considered all matters raised, the appeal was dismissed.

b) Enforcement Appeals

Appeal Ref: A2018/003 **Planning Ref:** E2016/0150

PINS Ref: APP/Y6930/C/17/3190517

Appellant: Marc O'Mahoney

Alleged Breach: The breach of planning control as alleged in the notice is making a material change in use of the land from woodland to a domestic garden associated with 7 Tai Banc, Tonna, Neath including the erection of an outbuilding on land outside settlement limits, and outside of a residential curtilage of the property.

Site Address: Land adjacent to 7 Tai Banc, Tonna

Appeal Method: Written Representations

Decision Date: 5th June 2018

Decision: Dismissed / Notice Upheld (as varied)

Appeal Decision Letter

The appeal relates to a parcel of land located opposite No.7 Tai Banc in Tonna which forms part of a wider area of land which is predominantly wooded and slopes away at a steep gradient from Tai Banc down to the canal located to the west of the appeal site. Despite being separated by Tai Banc the land in question is currently in use in association with No.7 and incorporates a partially constructed outbuilding, an area utilised for off-street parking and the siting of residential paraphernalia.

In the interest of clarity and precision, the alleged breach was amended to read: "*The material change of use of the land from woodland to a domestic garden associated with 7 Tai Banc, Tonna, Neath, including the erection of an outbuilding*."

An **appeal under ground (b)** is that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact. As it was clear at the time of his site visit that the land is

currently in use as a domestic garden area associated with No.7 Tai Banc, with a partially constructed outbuilding on site, there is little doubt that the matters that comprise the alleged breach of planning control have occurred.

Much of the appellant's arguments turn on the contention that there has not been a breach of planning control. Despite not being explicitly pleaded on the Appeal Form, such arguments largely comprise an **appeal under ground (c)**. Moreover, arguments about whether or not it was too late for the Local Planning Authority (LPA) to take enforcement action are akin to an appeal under **ground (d)**. Specifically, the appellant contended that there has not been a breach of planning control given that the land in question has always been associated with No.7 Tai Banc and that, despite a fire at that property, the use of the dwelling and indeed the residential use of the land in question, has never been abandoned.

Based on the evidence available and the tests established through case law, the inspector had some sympathy with the appellant's arguments in relation to the issue of 'abandonment'. Indeed, the evidence indicates that the renovation works following the fire did not require planning permission which in itself suggests that the residential use of No.7 was never abandoned or lost. The evidence relating to such matters is limited however and, in any event, such arguments should not be decisive to the determination of this appeal. Indeed, even if the residential use of No.7 was never abandoned, there remains reasonable doubt as to whether or not the extent of the area covered by the enforcement notice has historically formed part of the residential curtilage of that property. Indeed, it is this matter that should be decisive to the success, or otherwise, of the appellant's arguments under the legal grounds of appeal.

The land in question forms part of the same land registry title as the residential dwelling at No.7. However, the fact that the land is part of the same land registry title does not confirm that the area subject of the enforcement notice is lawfully part of the residential curtilage of No.7. Indeed, it is not uncommon for home owners to own land outside of a defined residential curtilage.

The Inspector fully considered the statements submitted as part of the appellant's evidence, but noted that much of the content of the

statements was prefaced with terms such as ‘to the best of my knowledge’ and, despite some accounts indicating that the land may have been used as ancillary to wider residential uses, no cogent evidence has been submitted to indicate that this has ever been made lawful through the grant of planning permission or through the passing of the relevant immunity period specified by the Act.

In considering such matters, he was particularly mindful of the fact that the burden of proof lies with the appellant and it is on this basis that he considered there to be insufficient evidence to prove that, on the balance of probability, there has not been a breach of planning control. It follows that the appeal under ground (b), and any hidden arguments normally advanced under the other legal grounds of appeal, failed.

In considering the planning merits (under Ground (a)) he noted that the land lies outside of the settlement limits defined by Policy SC1 of the LDP. That policy states that development will only be permitted outside of the identified settlement limits in the circumstances set out in the associated criteria.

The residential use of land, including the extension of a residential curtilage, is not one of the policy exemptions set out by that policy and, in this respect, the change of use and the associated development of the outbuilding conflicts with the adopted development plan.

Given the topography of the site, the area incorporating the outbuilding is largely seen within the context of the existing residential development along Tai Banc and the substantial gabion structures located beyond the residential dwellings. He also observed that the scale, siting and overall design of the partially erected outbuilding is typical of a residential garage. Such matters, along with the fact that the residential use of that land would enable off-street parking on an otherwise unclassified road with no pedestrian footway, “clearly weigh in favour of the appeal proposal”. Nevertheless, success under ground (a) would mean that the matters alleged within the enforcement notice would be granted planning permission. It therefore follows that, in this case, planning permission would be granted for the residential use of the extensive area of land covered by the enforcement notice, including the land sloping down to the canal. The sloping elements

of the site relate poorly to the existing built form along Tai Banc and the residential use of this land would have potential to cause significant harm to the visual amenity of the immediate and wider environs, particularly given its prominence from the tow path along the lower Neath Canal.

Given that it would be beyond his jurisdiction to vary the terms of the boundary of the enforcement notice he found that the totality of the deemed planning application would cause material harm to the character and appearance of the area. A departure from Policy SC1 of the adopted LDP is not, therefore, justified. Moreover, without the change of use of the land, the partially constructed out-building remains unwarranted. For these reasons, and having considered all matters raised, the appeal under ground (a) also failed.