

SECTION B – MATTERS FOR INFORMATION

APPEALS DETERMINED

a) Planning Appeals

Appeal Ref: A2018/0011 **Planning Ref:** P2018/0321

PINS Ref: APP/Y6930/A/18/3205346

Applicant: Mr & Mrs S Hawkings

Proposal: Detached split level dwelling and associated works

Site Address: Plot A Land at Graig Road, Godrergrraig

Appeal Method: Written Representations

Decision Date: 13th August 2018

Decision Code: Appeal allowed (insofar as conditions 13,14 and 17 deleted and a varied permission granted)

[Appeal Decision Letter](#)

Although the original application was approved, the applicant submitted an appeal against eight of the conditions imposed on the consent (no's 1, 7, 8, 9, 13, 14, 16 and 17).

The main issues in such an appeal concern whether or not each of the conditions in dispute meets the tests prescribed in Welsh Government Circular WGC 016/2014: The Use of Planning Conditions for Development Management. The Circular specifies that conditions should be: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.

Condition 1 - Time limit of consent

Rather than the standard time limit of 5 years for the commencement of development, the decision specified a date which allowed approximately 2 years to reflect an existing outline planning permission which had been granted under the UDP when the site was situated within the settlement boundary. It now falls

outside the settlement boundary designated in the Local Development Plan and so represents a departure from Policy SC1.

The Inspector stated that it is Government policy to encourage the early commencement of development once it has been granted planning permission, and he considered the condition to reflect that policy whilst also being “*a generous compromise to permit the development which now conflicts with its settlement boundary policy*”. Accordingly it is a reasonable, relevant and necessary condition which meets the tests prescribed by the Circular.

Condition 7 - Permitted development rights removed for garage conversions

This Inspector considered this condition to be necessary as the forecourt area could not provide adequate space for three off street parking spaces together with a turning area for vehicles to enter and exit the site in a forward gear.

Conditions 8, 16 and 17 – Drainage

The Inspector noted that conditions 8, 16 and 17 effectively specify that foul water drainage shall be connected to the public sewerage system but that surface water and land drainage run-off shall be separately drained and not be connected to the public sewerage system.

Although the Appellants argued that they are unnecessary as they duplicate controls provided under Building Regulations legislation, the Inspector disagreed, noting that Building Regulations do not provide controls to prevent the connection of surface water drainage to the public sewerage system.

He noted that it is development plan and Welsh Government policy to promote sustainable forms of drainage and, in this area, the public sewerage system is a separate system (i.e. it does not accept surface water drainage). Further, the Conditions Circular clearly states that conditions can be used to secure sustainable means of drainage, and the Courts have confirmed that planning conditions are the principle mechanism for controlling discharges to the public sewerage system. Thus he did not accept the appellant’s argument, and concluded that these conditions to control the means of drainage are necessary. He did, however, agree that condition 17 was 16 not necessary as it duplicated controls already provided by Condition 16.

Condition 9 - Permitted development rights removed for any future doors, windows or dormer windows

This condition was imposed to safeguard the amenity of the area and the amenity of the neighbouring residents. The Inspector considered that the condition was necessary to control against impacts arising from the insertion of any new windows.

Condition 13 - Obscure glazing from the side elevations

The condition required a window on the north east elevation to be obscure glazed to safeguard privacy, although it was acknowledged that the condition unfortunately stated the south west elevation. However, the relationship between side windows was considered acceptable, and as the window was a side facing landing window which is not a habitable room the Inspector considered that this condition would be unnecessary.

Condition 14 - Dimensions of the integral garage

Condition 14 specifies the minimum required dimensions for a double garage to be 6 metres wide by 6 metres length. Officers noted that if the condition was not applied, there would be no need to retain that size once the dwelling has been occupied.

The Inspector however considered the condition as worded was a duplication of condition 2 which lists the approved plans. Further he stated that if the Council's intention was to retain the garages at this size the condition should have been worded differently. The condition was therefore deleted.

Conclusion

Although the majority of the conditions were upheld, nevertheless the appeal was allowed in order to grant a varied planning permission by deleting the original conditions 13, 14 and 17.

Associated Application for an Award of Costs Against the Council

An application for costs was made by the appellant against the Council.

The Inspector noted that there was no doubt that the Council acted reasonably in applying those conditions which remained on the new permission, such that there is no question of an award of costs being made against it on their account.

In considering conditions 13, 14 and 17, which he concluded to be unnecessary, the Inspector found that

- The Council acted unreasonably in applying Conditions 13 and 14.
- The Council did not act unreasonably in applying Condition 16, since “an unimportant oversight of a duplication, which did not impose any additional requirements on the developer, does not amount to unreasonable behaviour”.

Imposing a condition that does not comply with the tests prescribed in the Circular is one of the examples of unreasonable behaviour by a local planning authority listed in the Annex on Award of Costs.

In order to warrant an award of costs, however, unreasonable behaviour must also cause the Applicant to incur unnecessary additional costs in making the appeal. In this case, the Inspector stated that most of the costs of the appeal would have been incurred on elements of the appeal which were unfounded. While he considered making a partial award, he considered the additional costs incurred by the Appellants in respect of the successful conditions was likely to be very small (and probably negligible) compared with the overall costs of the appeal. Indeed, he found that some “were so poorly founded that it could be argued they amounted to unreasonable behaviour on the part of the Appellants”. On balance, therefore he did not consider an award of costs to be appropriate.

NOTE: Members should note that the need for conditions to meet the tests applies also to Members at Committee, should requests be made for additional conditions. In this respect, both Officers and Members need to be mindful that should any subsequent appeal find their imposition to be unreasonable, an award of costs could follow against the Council.

Appeal Ref: A2018/0012 **Planning Ref:** P2018/0008

PINS Ref: APP/Y6930/A/18/3205636

Applicant: Mr and Mrs K Jones

Proposal: Two detached dwellings and associated works

Site Address: Land at Clos Llwynant, Alltwen

Appeal Method: Written Representations

Decision Date: 13th August 2018

Decision: Dismissed

[Appeal Decision Letter](#)

The proposal would generate additional traffic, estimated at approximately 20 no. 2 way traffic movements per day, and the Inspector found this to represent a significant increase in current traffic levels to Clos Llwynant a private access which serves 5 dwellings, the rear access to a dwelling on Ynysymond Road and a nursing home.

The key matter in dispute concerned whether this would represent an unacceptable effect on highway safety.

The Inspector noted that reference had been made to an existing wedding car hire business which operates from a garage granted planning permission in 2002 for use in association with the care home business. It was common ground that the business has been in operation for more than 10 years, however he noted that it does not benefit from planning permission or from a certificate of lawful use. Furthermore, while it appears to have operated at a higher level at some time during that period, it is currently run at a very low level, such that its degree of lawfulness is clearly uncertain.

The Appellants stated that the business would cease to operate in the event that planning permission was granted for the proposals. Whilst that would reduce the net increase in vehicular movements, in view of its current low level of operation and lack of certainty on its lawfulness, the Inspector made very little allowance for it, and it did not change his conclusion that the addition of 2 new dwellings would represent a significant increase in traffic levels.

The Appellants offer to close the rear access to the house on Ynys y Mond Road was considered to have a negligible effect as that only serves a small proportion of traffic movements to and from that property.

In considering the Council's submissions on the shortcomings in the access for the site, he noted that: -

- Existing access onto Ty Llwyd Lane is substandard and their increased use would introduce increased risks for vehicular and pedestrian safety.
- The junction of Clos Llwynallt with Ty Llwyd Lane is seriously deficient in visibility - Vehicles exiting Clos Llwynallt do so almost blind of any vehicles travelling from their left along Ty Llwyd Lane -and that the generation of additional vehicles using it would be unacceptably detrimental to highway safety.
- The narrow width of Ty Llwyd Lane itself between its junctions with Clos Llwynallt and the main road, Ynys y Mond Road results in conflicts, and even though it may occur infrequently, there can be no doubt that conflicts do occur and that increased traffic generated as a result of the proposed development would make such conflicts more likely to occur. The applicants suggested mitigation measures such as a layby between the 2 junctions would not make much of a difference.

The inspector noted that while the Council clearly attributed more importance to the third matter than to the others, he considered the second to be "of considerable significance" insofar as the negligible visibility to the left along Ty Llwyd Lane when traffic exits Clos Llwynallt represents a dangerous situation which would be made worse by increased traffic from Clos Llwynallt.

The Inspector thus concluded that the increased traffic generated by the proposed development would be unacceptably harmful to highway safety due to the seriously substandard visibility at the junction of Clos Llwynallt and Ty Llwyd Lane, the substandard nature of Ty Llwyd Lane itself between the same junction and its junction with Ynysymond Road and the substandard nature of Clos Llwynallt itself to serve additional development. For these reasons it would be contrary to Policies BE1 and TR2 of the adopted Local Development Plan.