

THE VALE OF GLAMORGAN COUNCIL

PLANNING COMMITTEE: 13TH APRIL 2005

REPORT OF THE DIRECTOR OF ENVIRONMENTAL
AND ECONOMIC REGENERATION

4. APPEALS

(a) Planning appeals received

L. P. A. Reference No: 04/01934/FUL
Appeal Method: Written Representations
Appeal Reference No: 05/1175488
Appellant: Mr. and Mrs. Mapstone,
**Location: Valley View Fruit and Veg. Stores, 7, The Parade,
Castle Drive, Dinas Powys**
Proposal: Single storey rear extension and new shop front
Start Date: 28th February, 2005

L. P. A. Reference No: 04/01985/FUL
Appeal Method: Hearing
Appeal Reference No: 05/1175774
Appellant: Meridian Building Design,
Location: 47, Stanwell Road, Penarth
Proposal: Conversion of existing 1st and 2nd floor
accommodation into 3 flats
Start Date: 7th March, 2005

L. P. A. Reference No: 04/00849/FUL
Appeal Method: Public Local Inquiry
Appeal Reference No: 05/1175868
Appellant: Mr. Paul Grove,
Location: Salt Barn, St. Athan
Proposal: Two reduced height two storey dwellings, each with
detached double garage. Application also details
changes/removal of existing access points
Start Date: 7th March, 2005

(b) Enforcement appeals received

None received during reporting period

(c) Planning appeal decisions

L. P. A. Reference No: 04/01226/FUL
Appeal Method: Hearing
Appeal Reference No: 04/1168251
Appellant: Mr. J. Patel,
Location: 47- 49, Cardiff Road, Dinas Powys
Proposal: Change of use of ground floor of premises to A3 restaurant
Decision: **DISMISSED**
Date: 10th March, 2005
Inspector: Mr. P. MacDonald
Council Determination: Planning Committee

Summary

The Inspector noted that a Hearing into an appeal in respect of a similar change of use to these premises was dismissed by letter dated 18th November 2003. Following that appeal, the only issue that arose in this case was the determining issue in the previous appeal, namely the effect of the proposal on the living conditions of neighbouring occupiers with particular regard to cooking-smells and fumes.

The Inspector stated that, whilst the general efficiency of modern extract systems was not in question, the salient feature of the proposal is that the discharge point would be below the habitable room windows in the flats opposite, the nearest window being some 15.7m away. The view of the Council's Environmental Health Officer is that, whilst accepting that the Vent Master system proposed represents the best available technology, such a stack should ideally be at least 1m above any ridge within 20m, which cannot be achieved here. The concern would be that, if problems did arise in practice, the fact that the UV system represented 'best available technique' would mean that proceedings under the Environmental Protection Act 1990 would not resolve the matter satisfactorily.

Conversely, the Inspector noted that the appellant relied solely on manufacturers' claims, with no information whatsoever being made available as to how successful quoted installations in Cardiff had been, "even assuming that they replicated the particular circumstances of the appeal case".

The Inspector concluded that, on the balance of the evidence before him, that he could not conclude that it had been shown that a UV system would obviate problems in the particular circumstances of the case, and hence the precautionary principle should apply. He further opined that "there is nothing about the appeal building that makes it so suitable for restaurant use that conditions should be created which might impact unacceptably on the amenities of residents of a substantial and newly erected block of flats".

Costs Application

Officers also made an application for costs against the appellants on the basis that the appellant's decision to pursue the refusal at a Hearing was unreasonable, since it obviously had "no reasonable prospect of success". This was on the grounds that a proposal identical in all material respects to the present one, and involving the same building and the same appellant and agent, was dismissed by an Inspector following a Hearing. There had been no such change of circumstances.

The Inspector stated that the appellant had virtually no evidence to present other than manufacturer's data, and there was a complete lack of evidence showing how the system proposed would overcome the specific problem identified in the 2003 decision. In particular, he had no evidence from the appellant about the experience of the system in operation, such that he was being invited to put excessive confidence in manufacturer's claims as to the general efficacy of their products, unrelated to the specific features of this case.

In terms of whether the appellant acted unreasonably in exercising his statutory right and pursuing this appeal to a Hearing, having regard to the circumstances set out above, the Inspector stated that, having considered the matter at some length, he concluded, by the narrowest possible margin, that the circumstances did not constitute unreasonable behaviour leading to an award of costs. Given the lack of relevant evidence, the appeal was not well placed to succeed, but it was not so hopeless as to justify an award of costs against the appellant. Hence the Council's application for costs failed.

Comments

Given that this appeal hearing involved the repetition of arguments heard at the previous appeal hearing, which themselves involved considerable research and submissions in defence of the appeal, it is highly satisfying that, once again, the council has been successful in defending against the inappropriate use of this premises as a restaurant. It is disappointing, however, that this decision has not been accompanied by a successful application for an award of costs.

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| L. P. A. Reference No: | 04/00781/FUL |
| Appeal Method: | Hearing |
| Appeal Reference No: | 04/1164039 |
| Appellant: | Mrs. S. James, |
| Location: | Colebrook, 62, Pontypridd Road, Barry |
| Proposal: | Removal of part of front garden/rockery to form two car parking spaces off-street |
| Decision: | DISMISSED |
| Date: | 14th March, 2005 |
| Inspector: | Mr. A. H. Vaughan |
| Council Determination: | Officer Delegated |

Summary

The main issue concerned the effect that the proposal would have upon highway safety.

The Inspector noted that the appeal site fronts a busy road which is a primary distributor route into the town. The size and layout of the proposed vehicle parking bay, however, was such that it would not be possible to turn a vehicle around within its confines, such that a vehicle using the bay would either have to be reversed in off the carriageway, or reversed out into the carriageway.

In his view, either manoeuvre, along this busy route, would be dangerous, interrupting the flow of traffic and potentially harmful to the safety and wellbeing of road users. For this reason, he took the view that the proposal would seriously harm highway safety. The existence of other access points along the highway were themselves considered to cause a danger to road users, such that they should not be used as an example to permit harmful development on the appeal site.

Although noting objections to the proposal in terms of visual amenity, the inspector considered that it would be possible, through condition, to ameliorate the impact of the project on the appearance of the dwelling and its neighbours to the extent that its effect would be neutral.

Comments

This decision is yet another example of recent appeal success relating to proposals for new accesses onto classified roads where the inability to manoeuvre within the site, and thus resulting reversing movements onto or off of the highway, have been concluded to cause harm to highway safety. The existence of other such accesses once again having been concluded not to represent justification for approval of a substandard new access.

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| L. P. A. Reference No: | 04/01567/FUL |
| Appeal Method: | Written Representations |
| Appeal Reference No: | 04/1168053 |
| Appellant: | Graham James Property Holdings |
| Location: | Barry Hotel, Broad Street, Barry |
| Proposal: | Conversion of existing residential accommodation into 28 no. self-contained retirement apartments |
| Decision: | ALLOWED |
| Date: | 16th March, 2005 |
| Inspector: | Mr. C. I. Cochrane |
| Council Determination: | Planning Committee (contrary to recommendation) |

Summary

The main issues concerned the adequacy of provision of off-street car parking for residents of the proposed development, whether this would be likely to cause congestion and inconvenience on the public highway; whether the proposed conversion of the building to apartments would have adequate private amenity space for the occupants; and whether the proposed conversion would preserve the listed building and its setting.

The Inspector noted that the proposed layout and accommodation would fail to meet the Council's requirements for car parking or private amenity space. However, he recognised that there is no other land available on the site to meet these requirements without further demolition of parts of the listed building. In this respect, he noted that Welsh Office Circular 61/96 - 'Planning and the Historic Environment', advises that new uses can provide the key to the successful preservation of an historic building, and controls over detailed planning matters should be exercised sympathetically where it would enable a listed building to be given a new lease of life.

Although the building was noted to be structurally sound, it was in a poor state of repair generally, with the roof appearing to be failing in several areas. Without the funds that would be generated through a viable new use, he opined that the building would deteriorate quickly, such that its conversion to an appropriate use is a very urgent requirement.

In considering the building itself, he stated that the intrinsic architectural character of The Barry Hotel consists of its main facades to Broad Street and Windsor Road, redolent of a French Chateau style, with steep slate roofs and turrets and deep sash windows decorated with Bathstone dressings throughout. The facades, windows and doors appear

to be in reasonable condition, capable of being retained, repaired where necessary and restored. Internally there is an interesting central stairwell with large lantern and high ceiling rooms, decorated with cornices. Subject to the careful introduction of internal partition walls, he considered the accommodation to lend itself to residential conversion, with access to all apartments off the atrium-like staircase, and that the building could sustain the alterations necessary to convert it to apartments without any significant harm to its character or loss of its special interest. Residential conversion of the upper floors would also be likely to be far less disruptive to the fabric of the listed building than the alternative introduction of commercial uses, which have far greater floor loadings.

Subject to more details of the proposed internal alterations and partitioning of the large rooms being provided, he thus concluded that the proposed conversion to residential apartments would provide a secure future for the historic building, which would preserve its character and appearance.

On specifics, he considered that, whilst a greater amount of external private amenity space for the residents would be preferable under ideal circumstances, in this instance it is not feasible if the historic building is to be preserved intact on the site, such that permission should not be withheld for this reason alone.

In terms of parking, the principle of applying maximum rather than minimum parking standards seeks to promote more sustainable transport so as to reduce car dependency in suitable locations. The re-use and conversion of an existing large building, however, is also sustainable development. Bearing in mind its location and good access to the public transport network., he did not consider, the proposed conversion into retirement homes would justify full car parking provision.

Subject to conditions to safeguard detailed matters relating to submission of details of the car park and access surfaces, sound attenuation between apartments, and prior approval of the details of refurbishment of the building to protect the character of the listed building, he thus concluded that the proposed development would be an appropriate and welcome use of the listed building. Although the new residential units would lack private amenity areas and individual car parking spaces, this did not mitigate against the development due to the special circumstances of the need to preserve the historic building and its location close to all essential facilities.

Comments

This decision by one of the Inspectorate's architect Inspectors is recognised by officers to be a comprehensive assessment of the merits of the proposals which, although giving full consideration to the Council's concerns relating to parking and amenity considerations, has nevertheless considered the planning balance, and subsequently placed substantial weight on the need to find a beneficial re-use for this deteriorating listed building, in order to provide appropriate funding to restore it such that it continues to benefit the area in general. In this respect, such specific concerns have been overruled in this particular case due to the historic nature of the building.

L. P. A. Reference No: 02/01365/FUL
Appeal Method: Written Representations
Appeal Reference No: 04/1168502
Appellant: Doreen Curtis (prev. Hockey)
Location: Land adjacent to Glendon, Argae Lane, St. Andrews Major
Proposal: To retain building for the storage of hay animal feedstuffs and tack - Equine Use - Single storey
Decision: **ALLOWED**
Date: 18th March, 2005
Inspector: Mr. A. B. Nixon
Council Determination: Planning Committee

Summary

The main issues concerned whether adequate justification exists for this development in the countryside and its effect on the character and appearance of the same.

The Inspector noted that the development comprises a simple, functional structure, which evidently replaced a barn which burnt down in 1999. Given the existence and evident use of the adjacent stables building to which a lawful development certificate relates, he considered that a reasonable requirement exists for effective associated storage of hay and other feedstuffs, straw bedding and associated tack/equipment. In his view, this requirement is not adequately met by the existing stables building, which has little scope for associated storage; nor is it satisfied by the external storage of hay under polythene, which I saw has resulted in a significant deterioration of the stored material.

In his judgement the proposed building would be a minor element in the landscape which, if painted in an appropriate colour, would not be harmful due to its small dimensions and position adjacent to the existing stables, trees and hedgerows and away from public vantage points. He also noted that keeping horses for personal use and enjoyment is an aspect of recreational use clearly appropriate to rural locations, borne out by the much more up-to-date Policy ENV8 of the emerging unitary development plan, which is close to adoption.

Comments

Given the generally permissive nature of Policy ENV8, concerning horse-related development in the countryside, the Inspector has considered the impact of the building and concluded that there is justification for an additional storage building in this location.

(d) Enforcement Appeal Decisions Received

None received during reporting period

(e) April 2004 – March 2005 Appeal Statistics

| | | Determined Appeals | | | | Appeals withdrawn /Invalid |
|--|----|----------------------|----------------------|---------------------|-----------|----------------------------|
| | | Dismissed | Allowed | Part Dis: Part All. | Total | |
| Planning Appeals (incl. tree appeals) | WR | 32 | 6 | 1 | 39 | 2 |
| | H | 10 | 4 | - | 14 | 4 |
| | PI | 2 | - | - | 2 | 4 |
| Enforcement Appeals * | WR | 6 | 2* | - | 8 | 2 |
| | H | - | 1 | - | 1 | 2 |
| | PI | 3 ¹ | - | - | 3 | 2 |
| All Appeals | WR | 38 | 8 | 1 | 47 | 4 |
| | H | 10 | 5 | - | 15 | 6 |
| | PI | 5 | - | - | 5 | 6 |
| TOTAL | | 53 (79.5%) | 13 (19.5%) | 1 (1%) | 67 | 16 |
| This reporting period | | 2 (50%) | 2 (50%) | 0 (0%) | 4 | 0 |

* Includes Hedgerow Replacement Notice appeal

¹ Includes 20 Plymouth Rd, where ground (f) was allowed in part.(f) List of Forthcoming Hearings and Public Inquiries

| <u>DATE</u> | <u>SITE AND PROPOSAL/ BREACH</u> |
|-----------------------------|--|
| 19 th April 2005 | HEARING 11 Dingle Road, Penarth <i>Retrospective – conversion to 2 one-bed flats</i> |
| 26 th April 2005 | HEARING St. James Church, Leckwith <i>Retention/. regularisation of use of former church as two dwellings</i> |
| 17 th May 2005 | HEARING 25 Clive Place, Penarth <i>Hardstanding at front of property, creation of garden border, building of brick pier for gateway</i> |
| 24 th May 2005 | HEARING 47 Stanwell Road, Penarth <i>Conversion of existing 1st and 2nd floor accommodation into 3 flats</i> |

21st June 2005

PUBLIC INQUIRY

Salt Barn, St Athan

Two reduced height two storey dwellings

In abeyance

PUBLIC INQUIRY (PLANNING & ENFORCEMENT)

Ewenny Quarry, Ewenny

In abeyance

PUBLIC INQUIRY (ENFORCEMENT)

Lower Greenway Farm

Change of use of the land and buildings from use for agricultural use to use for the manufacture, storage and sale of concrete related products

In abeyance

PUBLIC INQUIRY

Land allocated for employment, Rhose Point, Vale of Glamorgan

Outline application for residential development

Background Papers

Relevant appeal decision notices and application files (as detailed above)

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Officers Consulted

Head of Planning and Transportation

ROB QUICK
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AND ECONOMIC REGENERATION