

THE VALE OF GLAMORGAN COUNCIL

PLANNING COMMITTEE: 10 OCTOBER 2007

REPORT OF THE DIRECTOR OF ENVIRONMENTAL  
AND ECONOMIC REGENERATION

4. APPEALS

(a) Planning Appeals Received

L.P.A. Reference No: 2007/00430/FUL  
Appeal Method: Written Representations  
Appeal Reference No: 07/2052626  
Appellant: Stuart Munro,  
**Location: 6, Chaucer Close, Penarth**  
Proposal: Attic conversion and kitchen extension  
Start Date: 22 August 2007

L.P.A. Reference No: 2006/01124/FUL  
Appeal Method: Hearing  
Appeal Reference No: 07/2052758  
Appellant: Mr. C. Edwards,  
**Location: Land adjacent to Ty Maen Farm, Colwinston**  
Proposal: Construction of two dwellings  
Start Date: 28 August 2007

L.P.A. Reference No: 2007/00253/FUL  
Appeal Method: Hearing  
Appeal Reference No: 07/2053273  
Appellant: Mr. Guy Jones,  
**Location: Great House Farm, Llandough, Cowbridge**  
Proposal: Barn conversion to single residential dwelling  
Start Date: 4 September 2007

L.P.A. Reference No: 2007/00508/FUL  
Appeal Method: Written Representations  
Appeal Reference No: 07/2053515  
Appellant: Mr. B. & Mrs. J. M. Mantle,  
**Location: 52, Clive Place, Penarth**  
Proposal: Proposed removal of chimney stacks  
Start Date: 10 September 2007

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## Enforcement Appeals Received

L.P.A. Reference No: ENF/2002/0415/E  
Appeal Method: Written Representations  
Appeal Reference No: C/07/1201968  
Appellant: Mr. K. G. Broad  
**Location: Land to the side and rear of Broadacres, Cog Road, Sully**  
Proposal: Without the benefit of planning permission, erect a detached dwelling house  
Start Date: 23 August 2007

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### (b) Planning Appeal Decisions

L.P.A. Reference No: 2006/01506/FUL  
Appeal Method: Written Representations  
Appeal Reference No: 07/2046457  
Appellant: Mr. & Mrs. D. Mills,  
**Location: Building plot adjacent to Wernlas, St. Andrews Road, Dinas Powys**  
Proposal: Construction of new 3 bed. detached house with ancillary parking  
Decision: Appeal Dismissed  
Date: 17 September 2007  
Inspector: Mr. D. Sheers  
Council Determination: Committee

### **Summary**

In dismissing the appeal the Inspector agreed with the Council's findings and stated that the proposed development would appear out of accord with the pattern of built development in the area, would erode the spacious, rural qualities of this area and conflict with Council Policy which seeks to protect residential areas characterised by high standards of spaciousness against overdevelopment and insensitive infilling.

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L.P.A. Reference No: 2007/00293/FUL  
Appeal Method: Written Representations  
Appeal Reference No: 07/2045360  
Appellant: J. F. Whatling,  
**Location: 37, Monmouth Way, Boverton, Llantwit Major**  
Proposal: Second storey extension to side of property  
Decision: Appeal Dismissed  
Date: 10 September 2007  
Inspector: Robert Gardener  
Council Determination: Delegated

### **Summary**

The Inspector considered the main issues to be the effect of the proposed extension on the character and appearance of the existing pair of semi-detached houses and on the street scene generally.

The appeal property is a semi-detached house which has already been extended with a 2-storey side addition. The proposal subject of the appeal sought to extend the frontage even further. The Inspector objected to the proposed addition as it was not subordinate and did not visually maintain the existing situation. He found the proposal to be an awkward addition to the building and an uncharacteristic feature in the street scene. He found the stepped and staggered side elevation to be an ugly and incongruous design feature, unrelated to either the existing building or the locality generally, that would remove to an unacceptable extent the space which separates the appeal property from its detached neighbour. The Inspector concluded that the proposal would not only fail to meet the objective of Policy ENV27 but would be contrary to the Assembly Government's requirement that good design should be achieved in all development.

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L.P.A. Reference No:	2006/01258/FUL
Appeal Method:	Written Representations
Appeal Reference No:	07/2045110
Appellant:	Mr. & Mrs. T. Saunders,
<b>Location:</b>	<b>21, Pembroke Close, Dinas Powys</b>
Proposal:	New detached dwelling to the side of no. 21, Pembroke Close
Decision:	Appeal Allowed
Date:	4 September 2007
Inspector:	Robert Gardener
Council Determination:	Committee

### Summary

With regard to the position of the new dwelling, the Inspector commented that the development would not disrupt the uniformity of the original estate layout to a harmful extent, in view of the curve of the adjoining highway away from the appeal site and the screening provided by several mature trees on the grassed area onto which the appeal site faces.

As to the design, the Inspector considered it to closely reflect the existing semi-detached house (and most of its neighbours) in architectural style. He commented that, while the new dwelling would have a narrower front elevation, the difference would be modest and otherwise its height and bulk are such that, taken with the proposed repetition of details and materials, the house would not appear out of place. Whilst he recognised that there are no other detached properties in the vicinity, he considered the proposed dwelling to be a reasonable progression of the Pembroke Close frontage on this side. He also considered the resulting area of amenity space to serve No. 21 to be acceptable as it would not be dissimilar to other existing garden areas in this frontage or elsewhere. The Inspector allowed the appeal but imposed a number of conditions on the planning permission granted.

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L.P.A. Reference No: 2006/01310/FUL  
Appeal Method: Written Representations  
Appeal Reference No: 07/2044681  
Appellant: Mr. G. Perkins,  
**Location:** **Woodlands, Peterston-Super-Ely**  
Proposal: Field shelter/machinery store  
Decision: Split Decision - ALLOWED - see file  
Date: 29 August 2007  
Inspector: Iwan Lloyd  
Council Determination: Delegated

## Summary

The Inspector considered the main issue in this case to be whether or not the project is justified in a rural location, having regard to the character and appearance of the countryside. The property, Woodlands, is a large dwelling with outbuildings set within its own substantial grounds. Outside the residential curtilage of the house an area of 6.5ha of land is used for cultivating grass and for the keeping of sheep and horses.

The Inspector issued a split decision and allowed the appeal in respect of the field shelter and access road and dismissed the appeal in respect of the storage container.

### *Field Shelter and Access Road:*

In allowing this element of the appeal, the Inspector recognised that the building and track was not required to serve an agriculture enterprise. He did, however accept that UDP Policy ENV1 can permit other development in the countryside for which a rural location is essential. He commented that, in order to preserve the character and appearance of the countryside, agricultural land requires it to be farmed and maintained. From what he saw on site, the land was appropriately cared for and maintained, and in order for it remain in this condition, he saw no reason in principle to object to a small field shelter and access road. He found them to be commensurate to the area of land presently farmed and reasonably necessary, and are required in this particular location in alignment with UDP Policy ENV1. In addition to this, he stated that the shelter was hidden from any public viewpoints, it is discreetly located within a wooded enclosure and no harm would arise to the character and appearance of the countryside. He also found the access road to align closely with the adjoining hedgerow and to be common in the rural landscape causing no harm to the character and appearance of the countryside.

### *Steel Container:*

The Inspector found the steel storage container to be visible from the roadside in its proposed location. He noted that it is not specifically designed for agricultural purposes, and fails to align with UDP Policy EMP8 (ii) and would be incompatible with the surrounding landscape under criterion (iii). As there was no justification for the container, i.e. type of machinery that would be stored in it, the Inspector was unconvinced that it would be reasonably necessary or required in this rural location, contrary to UDP Policies ENV1 and EMP8 (i).

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L.P.A. Reference No: 2006/01180/FUL  
Appeal Method: Written Representations  
Appeal Reference No: 07/2044594  
Appellant: Mr. I. Yuksel,  
**Location:** **The Tuck in Cafe, 160, Barry Road, Barry**  
Proposal: Retention of use as cafe with ancillary hot food  
takeaway and proposals for fume extraction  
Decision: Appeal Dismissed  
Date: 14 September 2007  
Inspector: Mr. T. J. Morgan  
Council Determination: Delegated

### Summary

The Inspector considered the main issue to be the consequences of allowing hot food takeaway sales on the free movement and safety of road users on the public highway in the vicinity.

In dismissing the appeal, the Inspector was convinced that there would be insufficient safe parking spaces to cope with likely demand and as a consequence parking in connection with the takeaway use would cause undue risk to highway safety in the vicinity, in conflict with Policy TRAN 10, and criteria (i) and (ii) of Policy SHOP10. The Inspector considered that this is a situation where despite controlled parking, unacceptable road safety or congestion would remain.

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L.P.A. Reference No: 2006/01745/FUL  
Appeal Method: Hearing  
Appeal Reference No: 07/1201181  
Appellant: Mr. and Mrs. J. E. Raymond,  
**Location:** **Gwern y Gedrych Farm, Peterston Super Ely**  
Proposal: Proposed extension  
Decision: Appeal Allowed  
Date: 20 August 2007  
Inspector: Mr. C. I. Cochrane  
Council Determination: Delegated

### Summary

A two storey extension has already been erected on this property. An Enforcement Notice was served in respect of this extension. At appeal, the Inspector allowed the retention of the extension but only if it was to be reduced to single storey. This appeal relates to a proposal to retain the two storeys of the existing extension, with a lesser reduction in the overall height of the development, than that catered for on appeal.

In consideration of the appeal, the Inspector considered the previous Inspector's conclusions in that the harm to amenity caused by the unauthorised extension could only be adequately alleviated by reducing the extension to single storey, so that it would appear entirely subservient to the main part of the house. In allowing the appeal, however the Inspector considered that the same relationship could be achieved by a lesser, but nonetheless recognisable step down in the roofline.

He commented that it is not essential for the extension to be single storey rather than two storey as at present, as long as it would appear to be secondary, an offshoot of the main house. He considered the design and size of the proposed development and found that the amended design of the extension would be in keeping with the character of the dwelling as a whole. The two Inspectors did not therefore come to the same conclusion in this case which is somewhat unusual and disappointing.

(c) April 2007 – March 2008 Appeal Statistics

		Determined Appeals			Appeals withdrawn /Invalid
		Dismissed *	Allowed	Total	
Planning Appeals (incl. tree appeals)	WR	17.5	10.5	<b>28</b>	3
	H	2	1	<b>3</b>	
	PI	-	-	-	
<b>Planning Total</b>		19.5 (62.9%)	11.5 (37.1%)	<b>31</b>	
Enforcement Appeals	WR	1	2	<b>3</b>	
	H	-	-		
	PI	-	-		
<b>Enforcement Total</b>		1 (33.33%)	2 (66.67%)	<b>3</b>	
All Appeals	WR	18.5	12.5	<b>31</b>	3
	H	2	1	<b>3</b>	
	PI	-	-	-	
<b>Combined Total</b>		17	11	<b>34</b>	3

(d) Other Matters

L.P.A. Reference No: 2005/01581/FUL  
 Appeal Reference No: 06/1198202  
**Location:** **Land to the rear of Dryslwyn, Penwyllt, Kiva Koti, Turkey Oak House, Wits End and Heddfan, Llanmaes**

L.P.A. Reference No: ENF/2005/0249/M  
 Appeal Reference No: C/06/1198208  
**Location:** **Land to rear of Dryslwyn, Llanmaes**

L.P.A. Reference No: ENF/2005/0250/M  
 Appeal Reference No: C/06/1198207  
**Location:** **Land to rear of Penwyllt, Llanmaes**

L.P.A. Reference No: ENF/2005/0251/M  
Appeal Reference No: C/06/1198206  
**Location:** **Land to rear of Kiva Koti, Llanmaes**

L.P.A. Reference No: ENF/2005/0253/M  
Appeal Reference No: C/06/1198205  
**Location:** **Land to rear of Merimbula, Llanmaes**

L.P.A. Reference No: ENF/2005/0254/M  
Appeal Reference No: C/06/1198204  
**Location:** **Land to rear of Heddfan, Llanmaes**

L.P.A. Reference No: ENF/2005/0252/M  
Appeal Reference No: C/06/1198203  
**Location:** **Land to rear of Turkey Oak, Llanmaes**

## **Summary**

Members will be aware that all six of the above appeals were considered jointly (in addition to a separate planning appeal for all six garden extensions).

The main issues in each appeal concerned whether the change of use of the land from agriculture to residential curtilage would harm the character or appearance of the open countryside or the village conservation area; and whether the development represents a significant loss of agricultural land of acknowledged quality.

The appeal sites were seen to extend the rear gardens of the six dwellings by some 55m to 75 metres onto the adjoining farmland. The original Inspector (a Mr. C. Cochrane) allowed the appeals subject to conditions and quashed the relevant Enforcement Notices. (Inspector's decision letter is enclosed at Appendix 1).

Officers were very concerned with the implications of this decision for other such substantial encroachments into the countryside, and dissatisfied with the Inspectors reasoning in this regard. Accordingly Committee authorised the Head of Planning and Transportation to seek an application for judicial review of the Inspector's decision in the High Court given the concerns over the Inspector's reasoning and the implications of allowing the garden extensions. (Council Minute is attached as Appendix 2).

Members will be pleased to note that the Treasury Solicitor acting for the Welsh Assembly Government has decided to concede to the judgement of the Court (see letter and consent order at Appendix 3) and thereby concede to the quashing of the previous Inspector's decision in respect of the Enforcement Notices served by the Council on unauthorised garden extensions.

The concession has been made on the basis that the inspector failed to provide reasons for the conclusion that the 'rounding off' which it was found the development would achieve, 'would be acceptable development in the countryside'.

Notwithstanding the above it remains open to the individually affected householders to defend themselves against the Council's claim.

There are now three possibilities as follows: -

- (a) That the Order is signed by all parities including the dependant householders and the matter comes to a tidy end or alternatively.
- (b) That it is signed by the Assembly and the Council, the others do not sign it and attempt to defend; or
- (c) They simply do not respond.

If the householders decide to defend their case then it will go to a Hearing (scheduled for Friday 5 October 2007). If they simply do not respond the Council's Solicitors will write to the Treasury Solicitors asking them to complete the Order anyway on the basis that the other defendants have leave to apply should they change their minds. Realistically, it is hoped that they won't want to defend the matter.

On the question of costs, the Assembly have agreed to pay the Council's costs up to the 30 August but the Council's Solicitor has advised that there will be consequential costs in completing the Order and has agreed to try to persuade the Treasury Solicitor that costs should be payable up to the date of signing of the Order.

An update of all the above matters will be available at Planning Committee. Given the above and the fact that the previous appeal decision has now been quashed; it is now for the Planning Inspectorate to arrange to hold a new appeal on behalf of the Welsh Assembly Government into the matter. It is therefore recommended that a Hearing be requested for this appeal in order to allow the Council to properly present its case to any new Inspector.

#### RECOMMENDATION

- (1) That the appeals in question now proceed with by way of a Hearing.

#### Reason for Recommendation

- (1) In order that the Council can robustly defend itself at the appeals in question.

#### Background Papers

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

Contact Officer - Justina M Walsh, Tel: 01446 704690

#### Officers Consulted:

Head of Planning and Transportation

ROB QUICK  
DIRECTOR OF ENVIRONMENTAL  
AND ECONOMIC REGENERATION