

PLANNING & DEVELOPMENT COMMITTEE

4 AUGUST 2022

REPORT OF: DIRECTOR PROSPERITY AND DEVELOPMENT

PURPOSE OF THE REPORT

Members are asked to determine the planning application outlined below:

APPLICATION NO: 22/0171/15 (RP)
APPLICANT: Mr B Toland
DEVELOPMENT: Variation of condition 2 (approved plans) of planning permission 20/1198/10 (re-submission).
LOCATION: PLOT 1, LAND AT 53 CENARTH DRIVE, CWMBACH, ABERDARE CF44 0NH
DATE REGISTERED: 11/02/2022
ELECTORAL DIVISION: Cwmbach

RECOMMENDATION: GRANT SUBJECT TO THE CONDITIONS BELOW:

REASONS:

The revisions to the dwelling are acceptable and neither detrimental to the character or appearance of the site and surrounding area, to the amenity of nearby residents, or highway safety.

The development would therefore be in accordance with Policies AW5, AW6 and AW10 of the Local Development Plan.

REASON APPLICATION REPORTED TO COMMITTEE

- Three or more letters of objection have been received.

APPLICATION DETAILS

This application is made under Section 73 of the 1990 Planning Act and seeks the variation of condition 2 (approved plans) of planning permission 20/1198/10 which gained consent for the construction of a detached dormer bungalow and garage at land known as Plot 1, Land at 53 Cenarth Drive, Cwmbach.

The previous application was granted on the 26th January 2021, subject to a number of relevant conditions. Condition 2 reads as follows:

Condition 2

“The development hereby approved shall be carried out in accordance with the following approved plans:

Location Plan, Block Plan and Proposed Plans (Drawing No. 2762 NB), dated 27/10/2020;

and documents received by the Local Planning Authority (LPA) on 27/10/2020, unless otherwise to be approved and superseded by details required by any other condition attached to this consent.

Reason: To ensure compliance with the approved plans and documents and to clearly define the scope of the permission”.

The applicant now contends that the condition should be varied to account for a number of alterations, as follows:

1. Removal of window on side (south-east) elevation of garage.
2. Addition of door on side (south-east) elevation of garage.
3. Re-orientation of gable end roof above garage.
4. Removal of porch on side (north-west) elevation of dwelling.
5. Replacement of window with full height double doors on front (south-west) elevation of dwelling.
6. Increase size of kitchen window on side (south-east) elevation of dwelling by lowering the cill level.
7. Removal of conservatory window on side (south-east) elevation of dwelling.
8. Increase size of the conservatory windows on rear (north-east) elevation of dwelling.
9. Various alterations to brick detailing and finishing.

No other alterations to the original planning permission are proposed with the development scheme remaining as previously approved.

SITE APPRAISAL

The application site is a rectangular plot of land located directly adjacent to existing residential dwellings, at the end of a cul-de-sac in a residential area of Cwmbach. The land was formerly part of the residential curtilage of an adjacent dwelling and now contains a newly constructed dormer bungalow, garage and associated parking and amenity areas.

The application site is located within the settlement boundary and the land to the immediate north of the site is designated as a Site of Importance for Nature

Conservation (SINC) and comprises the embankment of the former rail line linking Merthyr Tydfil with Hirwaun and the Vale of Neath.

PLANNING HISTORY

21/1528/15	Variation of condition 2 (approved plans) of planning permission 20/1198/10.	Refuse	06/01/2022
21/1311/39	Non-Material Amendment to approved planning permission (20/1198/10) for a change to window details, materials and roof above the garage.	Refuse	03/11/2021
21/0607/38	Discharge of Condition 4 (Vehicular Footway Crossing) and Condition 6 (Biodiversity Enhancement) of Planning Permission 20/1198/10.	Approve	10/03/2022
20/1198/10	Detached dormer bungalow and garage.	Approve	26/01/2021
20/0271/13	Residential development (Outline for 8 dwellings). (CMRA received 3/4/20, Ecology Survey received 1/5/20)	Approve	04/06/2020
20/1451/16	Construction of dormer bungalow (Plot 5 of outline consent 20/0271/13).	Approve	10/02/2021

PUBLICITY

The application has been advertised by direct notification to neighbouring properties and the erection of site notices.

Three letters of objection have been received as a result of this exercise and raise the following points:

- We object to the proposed planning application submitted for land on Plot 1, variation of condition 2 for privacy reasons.
- The screen that has been erected by the applicant does not suffice. Whilst it screens the oversized window that has been installed, it does not alleviate other privacy concerns we have, such as other areas of our garden being overlooked.

- We have three children who have a right to privacy in their own garden, this is a safeguarding issue. We also have two large dogs which could easily access the applicant's property without adequate boundary height.
- As a result of our ongoing privacy concerns, we felt left with no other option other than to erect a fence our side of the brick boundary wall that has been built by the applicant. The applicant has subsequently demanded we remove the fence as he claims to own 10cm of land beyond the boundary wall that he built. We appreciate this would be a civil matter, but quite frankly if the ridiculous piece of screening that has been erected is allowed and the window size is kept (which is not what was originally applied for) and our fence is potentially removed via legal challenge our family's privacy would continue to be encroached upon. If the screen was the full length of our property and the brick boundary wall this would be far more effective for both parties.

CONSULTATION

None undertaken.

POLICY CONTEXT

Rhondda Cynon Taf Local Development Plan

The current LDP's lifespan was 2011 to 2021 and it is in the process of being reviewed. The Planning (Wales) Act 2015 introduced provisions specifying the period to which a plan has effect and providing that it shall cease to be the LDP at the end of the specified period. These provisions were commenced on 4th January 2016 but do not have retrospective effect. Therefore, the provisions do not apply to LDPs adopted prior to this date and plans adopted before 4th January 2016 will remain the LDP for determining planning applications until replaced by a further LDP. This was clarified in guidance published by the Minister on 24th September 2020. Subsequently, the existing Plan remains the development plan for consideration when determining this planning application.

The application site is located within the Northern Strategy Area and lies within the settlement boundary of Cwmbach.

Core Policies:

Policy CS 1 – Development in the North

Area Wide Policies:

Policy AW 1 – Supply of New Housing

Policy AW 2 – Sustainable Locations

Policy AW4 – Community Infrastructure and Planning Obligations

Policy AW 5 – New Development

Policy AW 6 – Design and Placemaking

Policy AW 10 – Environmental Protection and Public Health

Northern Strategy Area:

Policy NSA 10 - Housing Density

Policy NSA 12 - Housing Development Within and Adjacent to Settlement Boundaries

Supplementary Planning Guidance (SPG):

Design and Placemaking

Access, Parking and Circulation

Planning Obligations

National Guidance

In the determination of planning applications regard should also be given to the requirements of national planning policy which are not duplicated in the Local Development Plan, particularly where national planning policy provides a more up to date and comprehensive policy on certain topics.

Planning Policy Wales Edition 11 (PPW) was issued on 24th February 2021 in conjunction with Future Wales: The National Plan 2040 (FW2040). PPW incorporates the objectives of the Well-being of Future Generations (Wales) Act into town and country planning and sets out Welsh Government's (WG) policy on planning issues relevant to the determination of all planning applications. FW2040 sets out the National Development Framework for Wales (NDF), WGs current position on planning policy at regional and national level.

It is considered the proposed development is consistent with the key principles and requirements for placemaking set out in PPW; and is also consistent with the Well-being of Future Generations (Wales) Act's sustainable development principles through its contribution towards the Welsh Ministers' well-being objectives of driving sustainable development and building healthier communities and better environments.

It is also considered the proposed development is compliant with the NDF, with the following policies being relevant to the development proposed:

1. Policy 1 – Where Wales will grow
2. Policy 2 – Shaping Urban Growth and Regeneration – Strategic Placemaking
3. Policy 33 – National Growth Area – Cardiff, Newport and the Valleys

Other relevant national planning policy guidance consulted:

Planning Policy Wales Technical Advice Note 12 – Design

Planning Policy Wales Technical Advice Note 18 – Transport

Manual for Streets

Welsh Office Circular 016/14: The Use of Planning Conditions for Development Management.

Paragraph 2.4 indicates that Section 73 of the Town and Country Planning Act 1990 provides for applications to be made to vary or remove conditions attached to existing planning permissions.

Paragraph 3 states that conditions should only be imposed on planning permissions if the conditions meet the six tests, these being:

1. Necessary
2. Relevant to planning
3. Relevant to the development to be permitted
4. Enforceable
5. Precise
6. Reasonable in all other respects

REASONS FOR REACHING THE RECOMMENDATION

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Furthermore, applications that are not in accordance with relevant policies in the plan should not be allowed, unless material considerations justify the grant of planning permission.

Main Issues:

Principle of the proposed development

Planning permission (reference 20/1198/10) has previously been granted for the construction of a detached dormer bungalow and garage at land known as Plot 1, 53 Cenarth Drive, Cwmbach.

This application seeks consent for the variation of condition 2 (approved plans) and proposes a number of changes to the fenestration and detailing of the dwelling, as well as an alteration to the orientation of the garage roof.

Applications made under Section 73 of the Town & Country Planning Act 1990 allow the Local Planning Authority to do one of two things when an applicant seeks to vary or remove conditions, it can: -

1. Grant consent either with or without conditions; or,
2. Refuse.

The key consideration in the determination of this application is whether the alterations proposed remain compatible with planning policy considerations. These matters are discussed further below.

Planning Considerations

The area in which the bungalow and garage have been constructed is residential in character, comprising of a range of dwellings, which include a mix of larger, mostly post-war and later 20th century detached houses and bungalows. Consequently, the street scene is varied in appearance and plot and property sizes, however there is still some commonality of design and external finishes typical of the era.

The dwelling is located at the end of the cul-de-sac and is not highly visible from the wider locality. The submitted plan that accompanies the application indicates that the overall scale of the development is unaffected and that the alterations proposed relate to the finishing and detailing of the development, most notably to the fenestration proposed, whilst the orientation of the garage roof has also been amended.

Consequently, it is considered that the layout, scale and appearance of the dwelling would continue to blend in with the existing dwellings within the local area, would integrate well with the existing street scene and would therefore not be detrimental to the visual amenity of the surrounding area.

In this case, the main issue is the effect of the proposed variations upon the amenity and privacy of neighbouring residents, most notably from the proposed change to the fenestration on the south-eastern side elevation of the bungalow.

The plans that accompany the application and the subsequent site visit show that an amendment to the kitchen window on the south-east facing side elevation of the dwelling has taken place via an alteration to its dimensions from what was originally proposed to be a 600mm deep, high-level window to a casement window that measures 1.050m deep. The neighbouring residents contend that the amendment has increased the potential for direct overlooking of their private amenity space owing to the proximity of the bungalow to their curtilage and this has previously been acknowledged by the Council via the refusal of the two most recent applications that have been submitted for Plot 1, being 21/1528/15 and 21/1311/39.

Ordinarily, the impact of a kitchen window would be limited. However, in this case, the room in question is open plan and also serves as a dining room and sitting area. As such, owing to their ongoing privacy concerns the neighbouring residents have erected their own close boarded fence under what they considered to be the permitted development rights allowable to them. In addition, and as a result of the two previously refused applications for Plot 1, the applicant has erected a screen across the full length of the kitchen window in an attempt to overcome the privacy concerns shown.

Therefore, and as a consequence of the amendments that have been conducted by the applicant and the adjacent residents of 52 Cenarth Drive, it is considered that the as built development would not have an unacceptable effect on the living conditions of the occupants of the adjacent dwelling in relation to privacy. The application would therefore comply with Policy AW5 of the Rhondda Cynon Taf Local Development Plan.

Members are advised that the issue surrounding the brick boundary wall, the fence that has been erected parallel to it by the neighbouring residents and any encroachment that may have taken place is a civil matter between the residents and the developer. Lastly, should the neighbouring residents have to remove the section of fence they have erected due to any potential legal challenge, it could be re-sited under cover of permitted development.

Conditions

Planning Practical Guidance makes clear that decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission unless they have already been discharged.

In this regard the planning history of the site, specifically application 21/0607/38, indicates that all pre-commencement conditions have been discharged. Furthermore, as the development has already commenced and the amendments sought implemented, there is no need for a condition setting a time limit for commencement.

A condition identifying the approved plans is however necessary for the sake of certainty.

Conclusion

Having taken account of all of the issues outlined above, and in light of the works that have been undertaken by the neighbouring residents, it is not considered the amendments sought would have any further impact upon the character and appearance of the surrounding area or the amenities and privacy of surrounding neighbours than that which would have occurred if the scheme was developed in accordance with previously approved plans.

The development would therefore be in accordance with Policies AW5, AW6 and AW10 of the Local Development Plan.

Community Infrastructure Levy (CIL) Liability

The Community Infrastructure Levy (CIL) was introduced in Rhondda Cynon Taf from 31 December 2014.

The application is for development of a kind that is liable for a charge under the CIL Regulations 2010 as amended however the application site lies within Zone 1 of Rhondda Cynon Taf's Residential Charging Zones where a £nil charge is applicable. Therefore, no CIL would be payable.

RECOMMENDATION: Grant

1. The development hereby approved shall be carried out in accordance with the approved plan:

Drawing no. 2762 NB (Proposed Detached Dormer Bungalow, Plot 1, Land at 53 Cenarth Drive, Cwmbach)

and documents received by the Local Planning Authority on 11/02/2022, unless otherwise to be approved and superseded by details required by any other condition attached to this consent.

Reason: To ensure compliance with the approved plans and documents and to clearly define the scope of the permission.