



Appeal Decision

by Helen Smith BA(Hons) BTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 22.08.2023

Appeal reference: CAS-02758-R4T0W3

Site address: Afan Forest Cottage, Tai'r Ynys Fawr, Pontrhydyfen, Neath Port Talbot, SA12 9RU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Billy Doyle against the decision of Neath Port Talbot County Borough Council.
 - The application Ref P2023/0129, dated 13 February 2023, was refused by notice dated 12 May 2023.
 - The development is described as 'Retention of parcel of land as garden curtilage in association with the property known as Afan Forest Cottage'.
 - A site visit was made on 25 July 2023.
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Decision

1. The appeal is allowed and planning permission is granted for parcel of land as garden curtilage in association with the property known as Afan Forest Cottage at Afan Forest Cottage, Tai'r Ynys Fawr, Pontrhydyfen, Neath Port Talbot, SA12 9RU, in accordance with the terms of the application, Ref P2023/0129 dated 13 February 2023, subject to the following conditions:
 - 1) The use of land as garden curtilage hereby permitted shall cease within 3 months if any one of the requirements set out in (i) to (iv) below are not achieved:
 - i. within 3 months of the date of this decision, a scheme for biodiversity shall be submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation;
 - ii. if within 6 months of the date of the submission to the Local Planning Authority (LPA) under (i) the submitted scheme for biodiversity enhancement is refused or the LPA fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Welsh Ministers;
 - iii. if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Welsh Ministers; and
 - iv. the approved scheme shall have been carried out and completed in accordance with the approved timetable.

Reason: In the interests of maintaining and enhancing biodiversity, in accordance with Future Wales Policy 9.

- 2) Notwithstanding the provisions of schedule 2, part 1, class E of the Town and Country Planning (General Permitted Development) Order 1995 (as amended for Wales) (or any order revoking and re-enacting that order with or without modification), no buildings shall be erected.

Reason: In the interests of the character and appearance of the countryside, in accordance with policies SP 14, SC 1 and BE 1 of the Neath Port Talbot Local Development Plan (LDP).

Procedural Matters

2. Notwithstanding the information given on the planning application form I have used the description of development included on the Council's Decision Notice, which is more accurate. However, since 'retention' is not a form of development I have excluded reference to this in the decision.
3. The use of the appeal site for residential curtilage in relation to Afan Forest Cottage has commenced, and the appeal therefore seeks retrospective planning permission. I note the presence of several outbuildings and structures on the site in association with the use. However, no details of these structures have been submitted with the application or are included within the original description of development. I also note from the Council's delegated report that the operational development including paths, three sheds, an area of raised decking and a pergola are not included within the scope of the planning application. I have therefore considered the use of the land only in the determination of this appeal.
4. The Appellant contends that the development has been carried out for a period in excess of 10 years and refers to its immunity from enforcement action. However, this is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. It is open to the appellant to apply to have the matter determined under section 191 of the Act.

Main Issue

5. This is the effect of the development on the character and appearance of the area and whether the development complies with national and local policies designed to protect the open countryside.

Reasons

6. The appeal site is located off Afan Valley Road which runs through the Afan Valley which is characterised by predominantly steep wooded hillsides. Whilst located immediately adjacent to the hamlet known as Tai'r Ynys Fawr, the site is outside of the settlement boundary defined by the Neath Port Talbot Local Development Plan (LDP) and therefore lies within the countryside. The only access to the site is through the host dwelling. It consists of a triangular piece of land which slopes gently to the northwest which is well screened from views outside of the site by the established mature tree and hedge boundaries to the northwest and southwest and by the timber fence of the adjacent dwelling, Plas Y Coed. The site is a grassed area with some ornamental planting and domestic paraphernalia including benches, paths and a washing line, together with the sheds, decking and pergola which do not form part of this submission.
7. Policies SP 14 and SC 1 of the LDP aim to protect the open countryside from inappropriate development outside settlement limits. Policy BE 1 of the LDP, seeks to, amongst other things, ensure that developments respect the site's context and

complement and enhance the character and appearance of the site. With regard to development in the countryside, paragraph 3.60 of Planning Policy Wales Edition 11 (February 2021) (PPW) recognises that new development must be strictly controlled and should be of a scale and design that respects the character of the surrounding area.

8. I have no evidence of the characteristics of the site prior to its use as residential curtilage. Nonetheless, owing to its position immediately to the southwest of the hamlet, the strong wooded boundaries to the south and northwest, and the fact that there is no other access to the land other than through the host dwelling, the appeal site visually and functionally relates more to this hamlet than the surrounding countryside. For this reason, together with its high level of screening from its surroundings, it is unlikely that this parcel of land would have made a significant visual contribution to the prevailing wooded countryside character of the area prior to its use as residential curtilage.
9. I recognise that the use of land as garden curtilage involves the use of domestic paraphernalia, mowed lawns and ornamental planting, which can erode the characteristics of the open countryside by reason of the resultant urbanised appearance. The extended curtilage is of a significant size relative to the original. Nonetheless, due to the high level of screening and the site's functional and visual linkage to the hamlet, it does not appear illogical or incongruent to the wider setting. For these reasons, I find that it does not harm the character and appearance of the area and consequently does not result in a harmful erosion of the countryside.
10. For the reasons set out above, I conclude that the development conforms to Policies BE 1 and SP 14 of the LDP and the objectives of PPW. Although the development conflicts with Policy SC 1 of the LDP, in that it does not fall within the specific circumstances where development in the countryside is permitted, I conclude that the individual circumstances of this case, and lack of any associated harm, outweighs this conflict.

Conditions

11. I have considered the Council's suggested conditions in light of the advice in Circular 16/14 'The Use of Planning Conditions for Development Management'. A condition requiring biodiversity enhancement is necessary to comply with Future Wales Policy 9; however, to accord with the test of enforceability I have amended that suggested by the Council.

Conclusion

12. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.
13. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives.

H Smith

INSPECTOR