



Appeal Decision

by Clive Sproule BSc MSc MSc MRTPI MEnvSci CEnv

an Inspector appointed by the Welsh Ministers

Decision date: 10/03/2023

Appeal reference: CAS-01970-G9F1T9

Site address: Ael Y Bryn North, Walter Street, Dowlais, Merthyr Tydfil CF48 3AP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mrs Helen Foley against the decision of Merthyr Tydfil County Borough Council.
 - The application Ref P/20/0305, dated 28/11/2020, was refused by notice dated 29/11/2021.
 - The development proposed is proposed dwelling (outline with some matters reserved).
 - A site visit was made on 29/11/2022.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of the development proposed used in the header of this decision letter is taken from the descriptions included on the Council's decision notice and the appeal form.
3. The application was made in outline with matters regarding access and scale proposed at this stage, and those in relation to appearance, landscaping and layout reserved for determination at a later date. Details supplied in relation to the scale of the proposed house, provide its height and lower floor level, along with the length and width of the dwelling.

Main Issues

4. These are the effect of the development proposed on: a) the living conditions of local residents in relation to overlooking, availability of daylight and visual impact; and b) biodiversity.

Reasons

Living conditions

5. The appeal site is a garden area between Ael-y-Bryn North and the rear of terraced housing on Regent Street immediately to the north of the property boundary. The terraced houses on Regent Street were constructed to step down the steeply sloping

gradient of the street toward the junction with Balaclava Road. Land levels on the appeal site reflect the steep slope on Regent Street by falling towards Balaclava Road, but land levels also fall sharply between the appeal site and the houses on Regent Street. Consequently, the appeal site is in elevated position close to and above the nearest houses in Regent Street, while also being near to and further above the rear of the terraced dwellings on Balaclava Road.

Overlooking

6. The existing garden area that forms the appeal site provides elevated views, through vegetation, to the rear amenity spaces and rear elevation windows of dwellings on Regent Street and Balaclava Road. Developing a new dwelling on this existing garden area has the potential to significantly increase the levels of actual and perceived overlooking from it. However, the appellant's Statement of Case notes the elevational details provided on application drawings to be "illustrative". These illustrative details show no windows or doors in the elevation next the rear amenity spaces of the houses on Regent Street and indeed, it is likely that a dwelling design would seek to take advantage of the views across Balaclava Road. The scope for the design of such a dwelling and its positioning within the appeal site, along with the steepness of the terrain, could reduce the potential for there to be significant levels of overlooking toward the houses and amenity spaces on Balaclava Road. Therefore, whilst the design and location of window and door openings have yet to be confirmed, I am satisfied that details determined at the reserved matters stage could ensure that no unacceptably harmful levels of overlooking occur from this outline proposal.

Availability of daylight

7. The proposed dwelling would have a footprint of up to 8.6m by 6.5m, and would be up to 8.5m in height. At certain times of the year, existing trees on and around the appeal site may reduce direct sunlight to neighbouring houses on Regent Street. This also could occur with the appeal scheme given the scale of the building proposed and its possible locations within the appeal site. However, it has not been shown that any potential reduction in direct sunlight or available daylight to the rear windows or amenity spaces of the dwellings on Regent Street likely would be sufficient for it to be unacceptably harmful to the occupiers of these properties.

Visual impact

8. This is an area where housing can be expected to occur, and be seen in elevated positions due to steeply changing land levels. The dwellings on Balaclava Road have significant separation distances from the appeal site. Consequently, the presence on the appeal site of a building with the dimensions sought, would be unlikely to have an unacceptably harmful visual impact due to the space remaining around the dwellings on Balaclava Road.
9. However, when the dimensions of the proposed building's footprint are set within the area of the appeal site, it confirms the proposed dwelling would inevitably be much closer to the rear amenity spaces and windows of the dwellings on Regent Street, than those on Balaclava Road. It is apparent from the evidence in this case, and as viewed on-site, that the proposed dwelling would be seen from the rear amenity spaces and windows of houses on Regent Street.
10. Due to its scale, elevated position and close proximity to the rear windows and amenity spaces of dwellings on Regent Street, the proposed dwelling would be likely to appear as a dominant and overbearing structure in views from them. This visual impact would be unacceptably harmful to the living conditions of occupiers of these houses on Regent Street and the associated rear amenity spaces. Any landscaping or planting along this

northern appeal site boundary could not be relied upon to be permanent and to provide effective mitigation for the proposal.

11. Policy SW11 of the Council's Replacement Local Development Plan ("RLDP") requires development proposals to be appropriate to its local context in terms of, amongst other things, its scale, height and massing. For the reasons given above, the unacceptable harm that would occur to local living conditions through the visual impact of the proposed development conflicts with RLDP Policy SW11.

Biodiversity

12. Existing ground conditions and vegetation on the appeal site have the potential to support a variety of habitats and species. At the appeal stage, the appellant submitted a "Technical Note" on ecological matters, which sought to address the preliminary ecological appraisal requested by the Council's Ecologist on 15/10/2021, and the Council's appeal statement responded to it.
13. The Technical Note found it unlikely that the appeal scheme would have any impact on protected species; and it is apparent that the bat and bird boxes and an insect tower referred to within the Technical Note could be provided through a planning condition. It is also evident that the appeal scheme would be unlikely to have an adverse impact on Regionally Important Geological Sites, Sites of Importance for Nature Conservation, Local Nature Reserves, or Priority Habitats and Species to conflict with LDP Policy EnW3; and by maintaining and enhancing biodiversity the proposal would comply with LDP Policy EnW1 which requires development proposals to promote the resilience of ecosystems.

Other Matters

14. Access to the proposed dwelling would be through the existing entrance to Ael Y Bryn North. It would provide an appropriate level of visibility to ensure safe access and egress for traffic associated with the development proposed. As such, the appeal scheme complies with LDP Policy SW11 criterion 5.
15. The appeal scheme would provide an additional dwelling, in an existing residential area through the use of previously developed land, and this provides moderate weight in favour of the proposal.

Conclusion

16. All matters raised in this case have been taken into account and none, including the scope of possible planning conditions, have been found to outweigh the identified harm and resulting conflict with development plan policy. Accordingly, the appeal should be dismissed.
17. 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 the Welsh Ministers' well-being objective of making our cities, towns and villages even better places in which to live and work.

Clive Sproule

INSPECTOR