



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 25/09/18

gan **Alwyn B Nixon BSc MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 11.10.2018

Appeal Decision

Site visit made on 25/09/18

by **Alwyn B Nixon BSc MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 11.10.2018

Appeal Ref: APP/E6840/C/18/3200088

Site address: Land at The Glebe, Newport Road, Magor, Monmouthshire NP26 3BZ

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr John Flynn against an enforcement notice issued by Monmouthshire County Council.
 - The enforcement notice was issued on 8 March 2018.
 - The breach of planning control as alleged in the notice is unauthorised erection of closed boarded fence to front gardens over 1m adjacent to highway.
 - The requirements of the notice are: Either: 1. Remove the fence fronting the highway
Or
2. Reduce the height of the fence fronting the highway to 1m.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: APP/E6840/C/18/3200092

Site address: Land at Silverdale, Newport Road, Magor, Monmouthshire NP26 3BZ

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr M Denmark against an enforcement notice issued by Monmouthshire County Council.
 - The enforcement notice was issued on 20 March 2018.
 - The breach of planning control as alleged in the notice is unauthorised erection of closed boarded fence to front gardens over 1m adjacent to highway.
 - The requirements of the notice are: Either: 1. Remove the fence fronting the highway
Or
2. Reduce the height of the fence fronting the highway to 1m.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: APP/E6840/A/18/3200781

Site address: Land at Silverdale and The Glebe, Newport Road, Magor, Monmouthshire NP26 3BZ

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Michael Denmark against the decision of Monmouthshire County Council.
- The application Ref DC/2017/01188, dated 14 November 2017, was refused by notice dated 14 February 2018.
- The development proposed is described in the application as "to retain fence to front of Silverdale and The Glebe as built".

Decisions

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a closed boarded fence to front garden on land at The Glebe, Newport Road, Magor, Monmouthshire NP26 3BZ referred to in the notice, subject to the following condition: Within 1 month of the date of this decision the fence shall be treated with a brown stain finish.
2. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a closed boarded fence to front garden on land at Silverdale, Newport Road, Magor, Monmouthshire NP26 3BZ referred to in the notice, subject to the following condition: Within 1 month of the date of this decision the fence shall be treated with a brown stain finish.
3. The appeal is allowed and planning permission is granted for the erection of closed boarded fencing to front gardens at Silverdale and The Glebe, Newport Road, Magor, Monmouthshire NP26 3BZ, in accordance with the terms of the application, Ref DC/2017/01188, dated 14 November 2017, and the plans submitted with it, subject to the following condition: Within 1 month of the date of this decision the fencing shall be treated with a brown stain finish.

Procedural Matters

4. The three appeals concern timber closed-boarded fencing that has been erected along the respective front boundaries of two dwellings recently constructed on adjacent plots separated by a shared central vehicular access from Newport Road. Since the main thrust of the Section 174 and Section 78 appeals is that permission should be granted for the fences and the arguments concerning the merits of the development are the same I deal with the ground (a) appeals and the appeal against the refusal of planning permission together.
5. The development is described in the application for planning permission as the retention of the fence. However, the act of development for which permission is retrospectively sought is correctly described as the erection of a closed boarded fence, as described in the enforcement notices. I have determined the appeals on this basis.

The ground (a) appeals and the applications for planning permission

6. The basis of an appeal on ground (a) against an enforcement notice is that planning permission should be granted for the development at which the notice is directed. Appeal APP/E6840/C/18/3200088 therefore seeks a grant of planning permission for the fence fronting The Glebe, whilst APP/E6840/C/18/3200092 seeks a grant of planning permission for the fence fronting Silverdale. Appeal APP/E6840/C/18/3200781 seeks permission for both fences, as sought by the planning application submitted in November 2017.
7. The Council's reasons for issuing the enforcement notices are the same as its reasons for refusing planning permission, namely that the fences are unacceptable in visual terms and that they obstruct visibility for vehicle users and pedestrians. I consider that the main issues in the case of all three appeals are the development's effect on the character and appearance of its surroundings and the development's implications for highway safety.

Effect on character and appearance

8. The two properties lie within the built-up area of Magor and stand on the south side of the main road through the settlement. They are new detached two storey dwellings built either side of a shared access which also provides access to Glen View, an older dwelling set behind The Glebe and Silverdale. The appearance of the surrounding residential area is mixed, with no particular obvious or distinctive defining characteristics. Although the frontages of some properties in the vicinity are marked by hedgerows a variety of other front boundary treatments are also present along Newport Road, including vertical closed-board fencing of similar height to that erected at The Glebe and Silverdale. Such fencing includes that along the frontage of Sierra House, immediately east of the appeal sites, and Llanberis and Belvedere a short way to the west.
9. The fencing is presently a noticeable feature in the street scene due to the timber's new and un-weathered appearance. However, I consider that this can easily be remedied by the simple application of a brown stain finish, as with the fencing at Sierra House. In the longer term natural weathering processes will occur, lessening the fencing's visual impact in the street scene. Subject to such treatment, which can be required by a planning condition, I conclude that the development which is the subject of the appeals would not harm the character or appearance of the locality. On this basis I conclude that the fencing erected at Silverdale and The Glebe satisfies the requirements of policy DES1 *General Design Considerations* of the adopted Monmouthshire Local Development Plan (LDP) in respect of its design, appearance and effect on its setting. Although the Council also cites LDP policy EP1 *Amenity and Environmental Protection* in support of its stance on this issue, I find no conflict in terms of any of the matters identified in that policy, including local amenity.

Highway safety

10. The appeal sites are accessed from the B4245 within a 30mph speed limit. Based on Manual for Streets (MfS) guidance and the stopping sight distance (SSD) applicable to a 30mph speed limit situation, the Council considered that access visibility of 2.4m x 40m in both directions was satisfactory in respect of the application (DC/2014/01452) for the erection of two dwellings in this location.
11. The access in this instance is a private shared driveway serving 3 dwellings. It has a splayed entrance. The B4245 carriageway is bounded by a kerbed footway at this point and the fences bounding The Glebe and Silverdale are set back still further,

being separated from the back of the footway by a modest verge area. In front of The Glebe the fence is set back in excess of 2.4m throughout. The fence fronting Silverdale encroaches very marginally within 2.4m of the carriageway edge for a small part of its length closest to the access, but exceeds 2.4m throughout the remainder of its length.

12. The X distance of 2.4m given in MfS2 *Wider Application of the Principles* is cited in relation to the distance back along the minor arm of priority junctions. In this case the access point is a shared driveway, where vehicle speed and frequency of use will be low. MfS2 notes that a minimum X distance of 2m may be considered in some slow-speed situations when flows on the minor arm are low, but that using this value will mean that the front of some vehicles will protrude slightly into the running carriageway of the major arm.
13. The access is located on the inside of a bend, which limits visibility in both directions. However, with the fencing in its current form visibility in excess of the 40m SSD exists in an easterly direction. Whilst visibility to the west from the access point is currently slightly less than 40m as measured to the nearside carriageway edge, the restriction in this direction is caused by the hedgerow fronting Lapins rather than the fence fronting The Glebe. Moreover, vehicles approaching from this direction will typically be travelling in the far lane of the highway, providing inter-visibility in excess of the 40m SSD. In any event, removing the fences or reducing their height to 1m as required by the enforcement notices would not materially increase visibility for drivers emerging from the access or forward visibility for drivers travelling along the B4245. The splays at the mouth of the access and the verges between the fences and back of footway give adequate visibility in relation to pedestrian users.
14. Having considered all relevant factors, I consider that the level of visibility obtainable with the fences in their present form is adequate and that the development as carried out does not prejudice highway safety for drivers or pedestrians. As such, I conclude that the development accords with policies MV1, DES1 (a) and EP1 of the LDP.

Other Matters and Overall Conclusions

15. 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 my decision is in accordance with the Act's sustainable development principle through its consistency with objectives concerning the promotion of environmental and cultural well-being and supporting attractive and cohesive communities.
16. I have considered whether any conditions are needed as a result of my decision to allow the appeals and grant planning permission. I shall impose a condition requiring that the fences be treated with a brown coloured finish, along the lines suggested by the Council and by the Appellants in their ground (f) arguments. I do not consider any other conditions necessary.
17. For the reasons given above the Section 174 appeals on ground (a) and the Section 78 appeal against the refusal of planning permission all succeed. Since I am allowing the Section 174 appeals on ground (a) there is no need for me to consider the ground (f) arguments.
18. Having taken account of all matters raised, I allow the appeals, quash the enforcement notices and grant planning permissions for the development concerned, as set out in the formal Decisions above.

Alwyn B Nixon **Inspector**