



Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 26/06/13
Ymweliad â safle a wnaed ar 26/06/13

gan **James Ellis LLB (Hons) Cyfreithiwr**
Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: **31/07/13**

Appeal Decision

Hearing held on 26/06/13
Site visit made on 26/06/13

by **James Ellis LLB (Hons) Solicitor**
an Inspector appointed by the Welsh Ministers
Date: **31/07/13**

Appeal Ref: APP/H6955/A/13/2193074

Site address: 15 Kent Road, Lodge, Wrexham LL11 5NW

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 under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
- The appeal is made by Mr and Mrs R Hughes against the decision of Wrexham County Borough Council.
- The application Ref: P/2012/0472, dated 29 June 2012, was refused by notice dated 21 August 2012.
- The application sought planning permission for the erection of a 3 bedroom detached dwelling with detached garage without complying with a condition attached to planning permission Ref: P/2005/0359, dated 21 June 2005.
- The condition in dispute is No 6 which states that: 'The development shall not be commenced until a scheme for the improvement of Cefn Road from the site to Kent Road has been submitted to and approved in writing by the Local Planning Authority. The dwelling shall not be occupied until the agreed scheme has been fully implemented'.
- The reason given for the condition is: 'To ensure highway safety'.

Decision

1. I dismiss the appeal.

Procedural matter

2. The appeal site has been the subject of a previous appeal decision, Ref: APP/H6955/A/05/1193302 dated 7 February 2006. That decision also related to an application to remove condition No 6 attached to planning permission Ref: P/2005/0359. The previous Inspector dismissed the appeal. He said that notwithstanding the number of dwellings already served by Cefn Road an additional dwelling would be likely to result in a material increase in vehicular use of the road. He went on to say that without some improvement works any material increase in vehicular traffic would be likely to result in further deterioration in the road's condition to the detriment of other road users and highway safety. The Inspector found that condition No 6 was necessary, relevant to the development to be permitted and reasonable in all other respects; and that it satisfied the other tests of *Welsh Office Circular 35/95: The Use of Conditions in Planning Permissions* ("the Circular"). The decision is a material planning consideration which will be borne in mind by me when making my determination.

Main Issues

3. The main issue is whether condition No 6 meets the 6 tests for conditions set out in paragraph 14 of the Circular, namely whether a condition is: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects. I shall also examine whether it would be appropriate to impose an alternative condition should the need arise, and I shall consider the human rights of the occupiers of the appeal property, if it is necessary to do so.

Reasons

4. Cefn Road is a narrow unadopted track which currently provides vehicular access to about 19 dwellings including No 15 Kent Road which has been constructed and is occupied by the appellants. Dwellings off Cefn Road are provided with garages and/or parking spaces. As I saw on my site visit, parts of the track have been surfaced (for example from No 4 Kent Road to the junction of Cefn Road with Kent Road, and where it adjoins Nos 15 and 16). However, in some places the track is badly rutted and potholed. Properties on the western side of the track, including the appeal property, front onto Kent Road (the B5101) although they have no direct vehicular access from Kent Road. However, a number of these properties have pedestrian access to Kent Road where some parking is available in two lay-bys.
5. The appellants did submit an improvement scheme (showing a road surface laid over hard core and the provision of drainage) to the Council in 2007 and this was subsequently approved by the Council. However, the scheme has not been implemented. The scheme was also accepted by the Council in connection with the erection of a new dwelling at No 14 Kent Road which is currently under construction, but not occupied. I understand that the improvement works from No 4 Kent Road to the junction between Cefn Road and Kent Road were the subject of a similar scheme submitted pursuant to a condition attached to the planning permission for the erection of No 4.

Is the condition necessary?

6. The TRICS database (which, in my experience, is widely used) indicates that traffic generation from an additional single dwelling is likely to be between 7 and 11 movements per day. An additional 7 movements per day would be likely to include 0.7 movements in each of the peak hours. To my mind, even if the lower TRICS figure is used, this would represent a material increase in vehicle movements along Cefn Road. In statistical terms, there would be more than a 5% increase in vehicle movements¹. Moreover, the nature and existing condition of Cefn Road itself suggests to me that an increase of 7 vehicle movements per day along it would be material in any event.
7. The appellants referred to a survey which was undertaken between 08.00 hours and 09.00 hours (a peak hour) on a date in June 2012. This recorded 3 vehicle movements coming out from Cefn Road onto Kent Road and none in the opposite direction with just one pedestrian using Cefn Road, albeit that there were children

¹ Whilst Welsh Assembly Government Technical Advice Note 18: Transport does not provide a specific definition of what a material increase would be in relation to traffic on Cefn Road, paragraph E4 of Annex E to the document, referring to traffic using junctions for trunk roads, does indicate that a 5% increase in those circumstances would be material.

waiting at a bus stop in Kent Road. In order to justify the low level of movements, mention was made of residents having pedestrian access to Kent Road from their properties and the availability of parking in the lay-bys on Kent Road. However, as I saw on my site visit, a good proportion of properties with frontages to Kent Road do not have pedestrian accesses and the garages/parking places off Cefn Road suggest to me that householders do use parking provision off Cefn Road. To my mind, the survey provides minimal information - a snapshot of what happened during one hour on one day and, accordingly, I attach limited weight to it.

8. Given the likely number of vehicle movements from No 15 Kent Road along Cefn Road (as suggested by the TRICS database) and the existing condition of the road, I consider that the movements are likely to lead to the further deterioration of the road which would, inevitably, be detrimental to other road users with an attendant likelihood of increased harm, particularly to pedestrians who already have to manoeuvre around existing potholes and ruts. The appellants indicated that the condition of the road has not resulted in accidents. To date, this may be so, but the nature of the road and its existing sub-standard condition in places is such that the potential for harm is already manifest, a situation that would only be exacerbated if condition No 6 was to be removed.
9. The appellants argued that the appeal site and the site at No 14 had previously been occupied by dwellings and that legal rights of way over Cefn Road remained. The evidence before me indicates that the previous dwellings had been demolished some time before planning permissions were granted for new dwellings at Nos 14 and 15 and that, in the intervening time, the vacant sites had been used for car parking by persons living in neighbouring properties. As I saw on my site visit, properties served by Cefn Road now have garages/parking spaces. Notwithstanding the legal situation concerning rights of way, I consider that the planning history of the site is such that when planning permission for the new dwelling was granted by the Council in 2005, this facilitated a substantial increase in likely vehicle movements from the site over Cefn Road. I therefore give little weight to the previous dwelling that existed on the appeal site.
10. Overall, I conclude that the condition is necessary in the interests of the safety of road users, particularly pedestrians. Removal of the condition would conflict with Policy GDP1(d) of the Wrexham Unitary Development Plan 1996-2011, adopted in 2005, which seeks to ensure safe and convenient pedestrian and vehicular access.

Is the condition relevant to planning?

11. The appellants argued that, in their view, Cefn Road is not a highway as it is a cul-de-sac which has not been adopted. This may be so. However, the salient point here is whether or not the safety of persons using Cefn Road to gain access to/egress from their properties is a material planning consideration. This point was accepted in the affirmative by the appellants at the hearing. Condition no 6 seeks to ensure the safety of the road users. I therefore conclude that it is relevant to planning.

Is the condition relevant to the development?

12. The Council contends that condition No 6 is needed because of the adverse effect that vehicle movements arising from the new dwelling would have on the condition of Cefn Road with an attendant impact on highway safety. I have already found that the condition is necessary. The purpose behind the imposition of the condition relates directly to a consequence arising from the implementation and subsequent occupation

of the development. The condition refers to a length of Cefn Road from the appeal site to Kent Road. Vehicles from the appeal site use this entire length of track and undoubtedly have an impact upon its condition. I therefore conclude that, in principle, the condition fairly and reasonably relates to the development.

13. The appellants have levelled a number of specific criticisms against the condition which could be said to refer to its relevance to the development. However, I consider it more appropriate to examine these points when I look at whether the condition is reasonable in all other respects, rather than here.

Is the condition enforceable?

14. In their statement of case, the appellants argued that condition No 6 is not enforceable. However, the way the condition is worded suggests to me that, in the event of non-compliance, it would be open to the Council to serve a breach of condition notice under section 187A of the Town and Country Planning Act 1990, as amended, or, indeed, an enforcement notice under section 172 of the Act, always provided that it was expedient to do so. At the hearing, the appellants fairly accepted that condition No 6 is enforceable, but pointed out that the condition would not be valid in the event that it were to fail any of the tests in paragraph 14 of the Circular. I therefore conclude that the condition is enforceable.

Is the condition precise?

15. The appellants have argued that Condition No 6 is not precise on two counts. First of all, it is said that the condition does not specify from which fixed point they are required to improve the road, i.e. from which extremity of the appeal site. Secondly, it is said that the scheme does not specify what is precisely required as an improvement. To my mind, the wording of the condition is precise insofar as it relates to the extent of the road to be improved. Whatever the intentions of the Council may have been, the words 'from the site' clearly indicate to me that the scheme should extend from that part of the boundary of the appeal site adjoining Cefn Road which is nearest to the junction of the road with Kent Road, namely the northern boundary of the site. No reference has been made in the condition to that part of Cefn Road running between the new dwelling and its garage.
16. The condition has been worded requiring the submission and approval of a scheme before development commences and the implementation of that scheme before occupation of the dwelling. Such conditions are often imposed. A common example is a landscaping condition. In such cases, it is not necessary for what is precisely required as an improvement to be set out in the condition. Should the need arise, what is required can be the subject of negotiation between an applicant and the local planning authority before a scheme is submitted. Indeed, in this case, the appellants have already submitted a scheme which has been approved by the Council. I therefore conclude that the condition is precise.

Is the condition reasonable in all other respects?

17. The appellants have raised a number of points in respect of this test and I shall deal with them in turn. It is said that condition No 6 is unreasonable because: the appellants do not own or control the Cefn Road access; discharging the condition without lawful authority could potentially impact on third party property rights and expose the appellants to risk of litigation; the appellants are required to improve the entire length of the road from their property to the junction; about 50% of the road is not so dilapidated or substandard so as to merit a refusal of permission for the

development; the appellants have been asked to improve the frontage of other properties which have been neglected by the owners of those properties; the appellants have already carried out works to the road, including their own frontage; and other householders have been asked to discharge the same condition.

18. I appreciate that the appellants do not own or control the Cefn Road access but condition No 6 is a 'Grampian' style condition which has been worded to cover that eventuality. The condition does not require works to be carried out but prohibits the commencement of development until an improvement scheme has been approved by the Council and also prohibits occupancy until the approved scheme has been carried out. In my experience, such conditions are commonly imposed. Here, the appellants may have to obtain the consent of other householders in order to carry out works and also obtain indemnities in respect of third party property rights so as to avoid litigation. However, this is not unusual in the context of 'Grampian' style conditions and does not, in my view, render the condition unreasonable. If the consent of certain householders etc. cannot be obtained, then it is always open to the appellants to submit an alternative improvement scheme to the Council for approval.
19. As I have already indicated, I consider it reasonable that, in principle, an improvement scheme should relate to the length of Cefn Road from the appeal site to the junction with Kent Road. This is because vehicle movements arising from the new dwelling will impact upon the condition of the road for that length of it. However, some improvements to the track (for example the hard surfacing from No 4 Kent Road to the junction, and the making up of the track fronting No 13) have taken place since the condition was imposed. In effect, less work is now required to implement any approved improvement scheme. Nevertheless, in my view, the condition of the track, in places, still merits the carrying out of an improvement scheme. For the avoidance of doubt, I am satisfied after carrying out my site visit that the condition of the track remains such that planning permission ought not to be granted for the development without condition No 6 being in place.
20. An improvement scheme would result in the frontages of other properties being improved and it could be said to better the interests of the owners/occupiers of those properties who may have neglected the condition of the road. This may be so, but it does not negate the purpose behind the imposition of the condition which is necessary and relevant to planning and the development. In my opinion, possible betterment to other parties does not result in the condition being unreasonable. The appellants have hard surfaced that part of the track fronting Nos 15 and 16 Kent Road to a high standard. They also carried out some repairs to the track outside their ownership/control in 2008, as shown by submitted photographs. However, the Council contended that the 2008 repairs were not of an acceptable standard as evidenced by the current condition of the track. I give due credit to the efforts of the appellants. Nevertheless, in my view, these have not overcome the identified harm that lead to the imposition of the condition.
21. Other householders have had similar conditions imposed in planning permissions. Again, this is not an unusual situation. When planning permissions with such conditions are imposed, there is no guarantee that any of the permissions are going to be implemented or if they are, that this will be within a given timeframe. I therefore consider it reasonable for such conditions, including the condition the subject of this appeal, to be imposed. In this case, the owner/occupier of No 4 Kent Road has already complied with a similarly worded condition which will be of help to the appellants in meeting condition No 6. Again, the owner of No 14 has a similar

condition attached to a permission which is currently being implemented. There may be merit in the appellants making an arrangement with the owner of No 14 with a view to carrying out a joint improvement scheme. That is a matter for those parties to discuss. However, I consider that the condition is reasonable, in planning terms, irrespective of whether an improvement scheme could be carried out jointly or whether it would have to be carried out only by the appellants.

22. I am therefore satisfied from the evidence that condition No 6 is reasonable in all other respects. Overall, I conclude that the condition has met the 6 tests set out in paragraph 14 of the Circular.

Alternative condition

23. At the hearing, there was some debate about whether an alternative condition should be imposed requiring improvement works to be carried out over a shorter length of Cefn Road to reflect those works that have already taken place. However, those works can count as part of an improvement scheme as required by the condition. The condition as worded does not preclude the appellants from submitting an alternative improvement scheme should they wish to do so. I therefore find that there is no need to impose an alternative condition.

Human rights

24. The appellants have sought to challenge the validity of condition No 6. However, I have found that the condition does meet the tests in paragraph 14 of the Circular. I now need to consider the implications of this. The appellants are currently occupying No 15 Kent Road without an approved improvement scheme having been implemented. On the face of it, the appellants are in breach of planning control because they have not complied with condition No 6. However, whilst the Council has not taken enforcement action of any kind to date and there is no enforcement appeal before me, it indicated that in taking any future enforcement action it would be trying to secure the implementation of an improvement scheme, with vacation of the new dwelling being seen very much as a last resort.
25. It is, of course, open to the appellants to implement an approved improvement scheme and comply with the condition, thus remedying the breach of control. From the evidence before me, I am not persuaded that the scheme that has already been approved (taking into account improvement works that have already been carried out) cannot be implemented. I note here that in response to a question put to him, Mr Hughes did say that he had not approached other landowners with frontages to Cefn Road, although he thought that one householder would not be willing for the approved scheme to be carried out on that part of Cefn Road fronting their property. As I have indicated, if legal or practical problems with implementing the approved scheme are found, then there is nothing to stop the appellants submitting another scheme (taking account of recognised problems) to the Council for approval. At the hearing, the Council fairly indicated that a revised scheme, if one were to be submitted, would be treated on its merits taking into account all relevant circumstances.
26. Whilst the Council could now take enforcement action, it seems to me from the evidence that any enforced vacation of the new dwelling is a long way off if, indeed, it has to take place at all. I am therefore doubtful that my decision results in an interference with the rights of the appellants in respect of private and family life and their home. Even if it does, and Article 8 of the European Convention on Human Rights is engaged, I consider that my response is proportionate after taking into

account the conflicting matters of public and private interests so that there is no violation of human rights.

Conclusion

27. After considering all the evidence before me, and for the reasons given above, I conclude that the appeal should be dismissed.

James Ellis

Inspector

APPEARANCES

FOR THE APPELLANT:

Elfed R Williams LLM, MA, FRICS, MRTPI	Principal, ERW Consulting, Chartered Surveyors and Chartered Town and Country Planners
Mr R Hughes	Appellant
Mrs Hughes	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Phillips MSc, MRTPI	Planning Officer, Wrexham County Borough Council
Peter Douthwaite	Highways Development Control Engineer, Wrexham County Borough Council

INTERESTED PERSONS:

David Duckworth	Local resident
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DOCUMENTS

- 1 Bundle of correspondence and drawings relating to the approved improvement scheme.

PHOTOGRAPHS

- 1 Series of photographs taken by the appellants showing improvement Works to Cefn Road carried out in 2008.