

DEVELOPMENT SERVICES

REPORT TO PLANNING &
HIGHWAYS COMMITTEE
24 September 2013

1.0 RECORD OF PLANNING APPEALS SUBMISSIONS AND DECISIONS

This report provides a schedule of all newly submitted planning appeals and decisions received, together with a brief summary of the Secretary of State's reasons for the decisions.

2.0 NEW APPEALS RECEIVED

(i) An appeal has been submitted to the Secretary of State against the delegated decision of the City Council to refuse planning permission for alterations to the existing raised decking and erection of a rear conservatory at 51 Mawfa Crescent Sheffield S14 1AS (Case No 13/00395/FUL)

3.0 APPEALS DECISIONS - DISMISSED

(i) An appeal against the delegated decision of the Council on 10 June 2013 to refuse planning consent side extension to dwellinghouse with storage area under at 11 Chestnut Drive, Sheffield, South Yorkshire, S35 1YZ has been dismissed (Case No 13/00828/FUL)

Officer Comment:-

The appeal related to an application for a side extension to a corner property. Due to changes in land levels within the site, the extension proposed was one and a half storeys at the front and one storey to the rear. The application was refused by the Council on the grounds that its design would be out of proportion with the existing house by virtue of its scale and siting and would be injurious to the generally open character of the street scene, contrary to Policy H14 of the UDP and guidance within the Supplementary Planning Guidance on Designing House Extensions.

The Inspector considered that the main issue was the effect of the development on the character and appearance of the area. Acknowledging the prominent position of the property, the Inspector agreed that the proposal would be significantly harmful to the character and appearance of the area and agreed that the proposal would conflict with policy H14(a) of UDP and Guidelines 1 and 2 of the Council's Supplementary Planning Guidance on Designing Housing Extensions.

4.0 APPEAL – ENFORCEMENT NOTICE

(i) To report that an appeal against the service of an Enforcement Notice relating to the unauthorised replacement of windows to the front and side of no. 2 Albany Road has been allowed.

Officer Comment:-

The Enforcement Notice required removal of all existing ground and first floor windows on the Albany Road and Chippinghouse Road elevations, within 12 months.

The appellant appealed under:-

- i) ground a) that planning permission should be granted; and
- ii) ground e) that the notice was not correctly served (as required by s172 of the 1990 Act).

On ground a) the Inspector considered the main issue to be whether the UPVC windows preserved or enhanced the character of the Nether Edge Conservation Area.

He noted Council policies in the Unitary Development Plan and Core Strategy promoted a high standard of design and were consistent with policies in the National Planning Policy Framework (NPPF). He also noted the Nether Edge Conservation Area Appraisal referred to the loss of original architectural features and poor quality replacements eroding the character of the Conservation Area. He also acknowledged the existence and aim of the Article 4 Direction was to prevent further erosion of character and promote gradual restoration.

However, he considered that the windows replaced by the appellant were not original sliding sash windows, and although they were timber, they were similar in their proportions and top hung opening to the replacement UPVC windows subject of the notice.

He did acknowledge that the replacement windows were out of character in terms of design and materials but felt they were similar to those they had replaced. He also gave weight to the poor condition of the previous windows, and that they were subject to extensive rot and although stating this was not sufficient justification for UPVC replacement he felt it resulted in the character and appearance of the Nether Edge Conservation Area being preserved.

He concluded that having regard to the poor condition of the previous windows, the quality and design of the UPVC replacements was 'sufficiently high' to avoid material conflict with UDP Policies BE5, BE15, BE16, and BE17, CS policy CS74, and the NPPF.

He therefore allowed the appeal stating that it cannot serve as a precedent for the replacement of timber sliding sash windows with uncharacteristic UPVC windows.

On ground e) the appeal failed.

The Enforcement Notice was therefore quashed and planning permission granted.

This is the second of two recently allowed enforcement appeals in the nether Edge Conservation Area, and there is fundamental disagreement with the Inspector's judgement on the contribution the UPVC windows make to the character of the Conservation Area. Officers are therefore currently in dialogue with the Planning Inspectorate over the potential for challenging the decision, and will update Members on this in due course.

ii) To report that an appeal against the service of an Enforcement Notice relating to the unauthorised material change of use of a dwellinghouse from a C3 dwellinghouse to a C4 House in Multiple Occupation (HMO) within the Article 4 Direction boundary at 21 Fieldhead Road, Sheffield, S8 0ZX has been dismissed.

Officer Comment:-

The Enforcement Notice required the unauthorised use to cease and the dwellinghouse use to be reinstated within 16 weeks. Planning Permission for the change of use had been refused in July 2012.

The appellant appealed under:-

- i) Ground a) that planning permission should be granted; and
 - ii) ground b) that the breach of planning control has not occurred as a matter of fact; and
 - iii) ground c) that there has not been a breach of planning control; and
 - iv) ground d) that at the time of the service of the notice, it was too late to take action as the use had been in place for more than 10 years; and
 - v) ground f) that the requirements of the notice exceed what is necessary to remedy the breach; and
 - vi) ground g) that the period for compliance is too short.
- i) on ground a) the Inspector considered the main issue to be whether the use complied with the aims of planning policy promoting mixed communities. Core Strategy Policy CS41 identifies 20% of dwellings in a 200m radius in shared ownership as a concentration that threatens the balance of mixed communities. The concentration level is currently around 22.5% including the appeal property. He concluded that this level of shared housing had altered the character of the residential area and undermined the aims to promote mixed communities such that there would have to be significant material considerations to allow the appeal on this ground. He gave little weight to the appellants offer of a legal agreement or planning condition to ensure the property was only let to professionals as

this would be unreasonable curtailing of the ability to let the property. The appellant also offered to reduce the number of occupants to five, however the Inspector noted this would not change the status of the property.

This ground also involved consideration of living conditions but the Inspector did not agree that noise and disturbance would occur as a result of the use, particularly as the Council's assertion on this point was not supported by evidence of harm from this particular use, or cumulatively.

On the basis of the impact on mixed communities objectives, the Inspector concluded the ground a) appeal should fail, and the deemed planning application be dismissed.

- ii) On ground b) the appellant claimed the use had come into effect before the Article 4 Direction came into effect. The Inspector noted this did not confirm the use had not occurred, but by contrast confirmed the opposite. As such the ground b) appeal failed.
- iii) On ground c) the appellant contended that the use had been in operation since December 2010, approximately one year before the need for permission arose through the Article 4 Direction. The Inspector noted such claims were not evidenced by lease/purchase documents or tenancy agreements. The onus of proof in such cases lies with the appellant and the Inspector was satisfied that on the balance of probabilities the appellant had not demonstrated that the use had commenced before December 2011, and a breach had therefore occurred. The ground c) appeal therefore failed.
- iv) On ground d) the Inspector noted no dispute that the alleged change occurred less than 10 years ago, and ground d) therefore failed.
- v) On ground f) the appellant argued that reducing the number of occupants to five would reduce the harm to satisfactory levels, however the Inspector had already considered this under ground a) and concluded it would not remedy the breach. This ground therefore failed.
- vi) On ground g) the appellant claims the period for compliance is unreasonable and suggests 12 or 24 months would be more so. He included reference to the need for eviction, and human rights. The Inspector noted the property was uninhabited at the time of inspection, and considered 12 months more than adequate to search for new accommodation. He therefore confirmed that the ground g) appeal succeeds and amended the notice compliance period to 12 months (from 16 weeks).

Subject to the variation in vi) above, the appeal was dismissed, the enforcement notice upheld, and planning permission refused on the deemed application.

5.0 RECOMMENDATIONS

That the report be noted

David Caulfield
Head of Planning

24 September 2013

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