

**Meeting:** Planning and Development  
Committee

**Agenda Item:**

**Date:** Tuesday 6 November 2018

## **INFORMATION REPORT - APPEALS / CALLED IN APPLICATIONS**

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### **1. APPEALS RECEIVED**

1.1 None

### **2. DECISIONS AWAITED**

2.1 None

### **3. DECISIONS RECEIVED**

3.1 17/00566/FP. 377 Jessop Road Appeal against the refusal of planning permission for the extension of existing dwelling and splitting into 2 no. 1 bedroom houses.

#### **3.1.1 Issues**

The determining issues relate to the effects of the proposal on (i) the effect of the character and appearance of the area and (ii) whether the proposed development would provide acceptable living conditions for occupiers of the development with particular regard to amenity space provision.

#### **3.1.2 Conclusions**

##### **(i) The effect on the character and appearance of the area**

The proposal relates to the proposed change of use from amenity land to private residential land and the erection of a two-storey side extension and single storey rear extension to facilitate the conversion of existing dwelling into 2 no. one bedroom dwellings. The existing property is a “Radburn style”, end of terrace with a single-storey garage wing.

The inspector considered that the proposed two-storey side extension would be narrow compared with the width of the house. In addition, she considered that due to the absence of a building line and retention of highway verge, despite the reduction of amenity space, she argued that the development would not appear unduly prominent or out of keeping within the vicinity of the appeal site. The inspector also felt the extension would successfully assimilate itself with the surrounding area due to the use of matching materials along with the extensions being consistent with the appearance of the nearby houses.

In regards to private amenity space, It was considered by the Council that the size of the amenity space provided for the dwellings would accord with the Council's Design Guide but concerns were raised that these were split between the front and rear and were limited in size and usability. However, the Inspector considered that this split was acceptable as it was comparable with adjacent gardens in the terrace. Therefore, she did not consider the arrangement of the amenity spaces was harmful to the appearance of the areas. In addition, despite the amenity spaces including parking spaces and bin storage areas, she did not feel the private gardens would appear cramped.

Further to the above, the Council raised concern that due to the limited size of the private gardens and the fact the applicant would be unable to erect outbuildings in the front garden spaces; the Inspector could not see any reason why this would be harmful to the character of the area.

Given the aforementioned, the Inspector concluded that the proposal would not have a harmful effect on the character and appearance of the area.

**(ii) Whether the proposed development would provide acceptable living conditions for occupiers of the development with particular regard to amenity space provision.**

With regard to acceptable living conditions, despite the limited size of the private gardens and the fact they were being split across the front and rear of the development, the Inspector considered these spaces were still sufficient to provide all of the relevant facilities such as car parking and bin storage. In addition, she considered these spaces were also useable as outdoor living areas for residents of the development.

In terms of the Council's concerns of overlooking of the private garden areas serving the new dwellings, especially the front gardens, the Inspector considered that the level of overlooking would not be significantly different to the current situation. Therefore, she felt the private garden areas were in accordance with the Council's Standards.

She concluded that the proposed development would provide acceptable living conditions for the occupiers of the development with particular regard to amenity space.

3.1.3 Decision

The appeal is allowed (appeal decision attached).

3.2 15/00671/FPH. Appeal against the issuing of an Enforcement Notice (EN) served for the alleged breach of condition 1 of the above reference for a single storey rear extension and loft conversion, which stated the development, must be carried out in accordance with the approved plans, and that the roof lights inserted on the rear roof slope do not comply with the approved plans in respect of their manner of opening.

3.2.1 Issues

The determining issues in the expediency of and serving the EN relate to the manner of opening of the roof lights not being in accordance with the approved plans.

3.2.2 Conclusions

The roof lights in dispute are the two Velux Cabrio units positioned side by side. They contain an upper and lower section. They are shown on approved drawings 15027-05 and 15027-06. Each roof light has two panes the upper pane being bigger than the lower pane with a horizontal division. The plans make no reference to the manner of opening of the rooflights.

The EN instructed the applicant to remove the Velux Cabrio roof lights and to insert central pivot opening roof lights of the same size and arrangement as shown on the approved plan. The Inspector noted following her site visit that the upper pane was top hung with a handle at the bottom, and that due to the weight of the upper section it does not allow the unit to balance open on its centre pivot.

The Council alluded in its appeal statement to the fact the approved drawings did not show details pertaining to the manner of opening, and whilst the Inspector accepted this, she also comments the section in particular did not show a central pivot opening. Consequently, the Inspector was minded to conclude that the rear roof slope rooflights accord with the approved plans. The appeal is therefore allowed and the EN quashed.

The applicant also sought costs against the Council. However, the Inspector reasoned that the Council did not act unreasonably in its interpretation of the plans and the subsequent serving of the EN, and that although the Inspector did not agree with the Council's interpretation an award of costs was not founded.

### 3.2.3 Decision

The appeal is allowed and Enforcement Notice quashed (appeal decision attached).

3.3 15/00671/FPH. Costs Appeal against the issuing of an Enforcement Notice (EN) served for the alleged breach of condition 1 of the above reference for a single storey rear extension and loft conversion, which stated the development, must be carried out in accordance with the approved plans, and that the roof lights inserted on the rear roof slope do not comply with the approved plans in respect of their manner of opening.

### 3.3.1 Issues

The determining issue is whether or not the Council had acted unreasonably and created an unnecessary expense to the appellant due to the issuing of an Enforcement Notice.

### 3.3.2 Conclusions

The Planning Practice Guidance (the Guidance) advises that irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

The Guidance provides that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal.

The Appellant claimed that the Council acted unreasonably in issuing an enforcement notice that was wholly without grounds as the rooflights were in accordance with the approved plans. He claimed that the Council provided no evidence to substantiate its reasons for issue of the notice. He drew attention to the way in which the Council changed its description of the works during the course of the appeal and the absence of any discussion or imposition of conditions concerning the manner of opening of the rooflights.

The Inspector addressed these points in their substantive decision. The Inspector did not agree with the Council's arguments in this case but that did not of itself make the Council's interpretation unreasonable. However, the Inspector did not consider the Council's position so flawed as to amount to unreasonableness for the purposes of the Guidance. The Inspector set out that the Council's arguments had some legitimacy albeit the Inspector did not find in the Council's favour.

For the reasons given, the Inspector considered that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, had not been demonstrated. I conclude that the award of costs sought by Mr M. Borrill against Stevenage Borough Council is not justified. The application should be refused and there is no justification for a partial award.

#### Decision

3.3.3 The application for an award of costs was refused.