

Meeting: Planning and Development
Committee

Agenda Item:

Date: Tuesday 3 March 2020

INFORMATION REPORT - APPEALS / CALLED IN APPLICATIONS

Author – Linda Sparrow 01438 242837

Lead Officer – Zayd Al-Jawad 01438 242257

Contact Officer – David Rusling 01438 242270

1. APPEALS RECEIVED

1.1 None.

2. DECISIONS AWAITED

2.1 17/00730/ENF, 18b Boulton Road. Appeal against serving of Enforcement Notice relating to an unauthorised gym operating from the premises.

2.1.1 This appeal for Boulton Road has been re-started as of 18 February 2020 to allow for the procedure to be changed from written representations to a hearing.

3. DECISIONS RECEIVED

3.1 18/00600/CLEU, 80 Kymswell Road. Appeal against refusal of a Certificate of Lawful Existing Use for the continued use of the premises as a HMO (use Class C4). Appeal allowed.

3.1.1 Preliminary Matters

The planning merits of the existing development are not relevant and not an issue for consideration.

3.1.2 Reasons

The principle question is whether at the time of the submission of the Lawful Development Certificate (LDC), the existing development was lawful.

On 20 September 2017 the Council confirmed an Article 4 Direction removing Permitted Development rights for change of use from Use Class C3 (Single Family Dwelling) to Use Class C4 (House of Multiple Occupation (HMO)). The application site operates as a HMO and rental agreements and bank statements were provided to evidence this is the case since 2012. The Council did not dispute this.

At the time the HMO commenced in 2012, the General Permitted Development Order that was in force allowed for a change of use from Use Class C3 to Use Class C4 without the benefit of planning permission. It follows that at the time the change of use occurred the development was lawful. The Article 4 cannot be applied retrospectively and as such the lawful use must still exist and there has not been a breach of planning control.

The Council applied the time limits set out in s.171B93) as the test for whether the existing use is lawful. These time limit provisions are only applicable when a breach of planning control has occurred. As established, no breach has occurred and therefore the time limits are irrelevant.

3.1.3 Conclusion

The Inspector found that on the balance of probabilities, the refusal to grant an LDC was not well founded and that the appeal should therefore succeed. Under powers directed to him under Section 195(2) of the 1990 Act as amended he issued the LDC.

Appeal decision attached.

3.2 19/00383/FP, 36 Fellowes Way. Erection of 1no. one bedroom bungalow. Appeal dismissed.

3.2.1 Main Issue

The main issue is the effect of the development on the character and appearance of the area.

3.2.2 Reasons

The appeal site is located within a predominantly residential area comprising two storey and single storey dwellings of differing designs and sizes. Dwellings are typically set back from the road with open frontages which makes a positive contribution to the openness of the area.

The appeal site forms part of the rear garden of 36 Fellowes Way, which tapers towards the rear. The proposed dwelling would be sited in the narrowest part of the garden with vehicle access from Fellowes Way. Whilst there is no clearly defined building line, dwellings are set back from the highway with spacious frontages. The proposed dwelling would be sited forward of Nos. 34, 34A and 36 Fellowes Way with the frontage at 900mm at its closest to the highway. The dwelling would appear significantly closer to the highway than neighbouring properties and would fail to reflect the established pattern and grain of development, reduce the openness of the area and appear incongruous and unduly prominent in the street scene.

The Inspector agreed with the appellant's view that No.34a Fellowes Way and a substation do not compromise the openness of the area, however these buildings are set back from the highway and retain an open and spacious frontage. The proposed dwelling would be significantly further forward of these buildings and diminish the openness of the area.

The Inspector goes on to acknowledge that the proposed dwelling would only be 3.2m in height, however he felt that its proximity to the highway would mean it would still be visible above the boundary fence. Whilst trees in the locality would screen the site, the dwelling would nevertheless remain prominent in the street scene.

The Inspector disagreed that the proposed dwelling could be perceived as ancillary to 36 Fellowes way owing to the vehicular access and general domestic comings and goings of a dwelling. He found no relevant comparison between the proposed dwelling and other ancillary buildings in the locality. Further, he stated that the Council made a compelling case that as the building would be within 2m of the boundary, even if it was ancillary to No.36, it would not be permitted development.

The proposed dwelling has been significantly reduced in height following previous refusals of permission and the Inspector acknowledges that this would result in far less impact on the character and appearance of the area than previous submissions. However he stated that the reduction in height was not enough to reduce the impact such that it would not be harmful.

He found that the proposed development would significantly harm the character and appearance of the area, contrary to Policies GD1 and HO5 of the Council's adopted Local Plan (2019). It would also fail to accord with the National Planning Policy Framework. The Council stated in their refusal that the development would fail to accord with their adopted Design Guide (2009), however the Inspector found no particular elements within this Design Guide that the development would conflict with.

3.2.3 Other Matters

As of November 2019 the Council has a demonstrable 5 year housing supply which the appellant does not disagree with. In the absence of any evidence to the contrary, the Inspector found no reason to conclude otherwise. Accordingly, he attributed full weight to the policies of the adopted Local Plan. The "tilted balance" set out in paragraph 11d of the NPPF is not engaged.

3.2.4 Conclusion

The Council raise no objections to the effect on neighbouring amenity, highway safety, parking provision or heritage assets. However, lack of harm in these respects is not a benefit but rather a neutral effect which affords no weight in favour of the proposal. Whilst the dwelling would have a good access to services, facilities and job opportunities and would make a positive, albeit very limited, contribution to the housing supply, the Inspector concluded that individually or cumulatively, these do not outweigh the harm to the character and appearance of the area and for these reasons, the appeal is dismissed.

Appeal decision attached.