

Meeting: Planning and Development
Committee

Agenda Item:

Date: Tuesday 8 October 2019

INFORMATION REPORT - APPEALS / CALLED IN APPLICATIONS

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1. APPEALS RECEIVED

- 1.1 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).

2. DECISIONS AWAITED

- 2.1 19/00165/FP, Land at 68 Wildwood Lane. Appeal against refusal of planning permission for the demolition of existing double garage. Erection of detached three-bedroom house and integral garage. Erection of replacement single garage to no. 68.
- 2.2 17/00730/ENF, 18b Boulton Road. Appeal against serving of Enforcement Notice relating to an unauthorised gym operating from the premises.

3. DECISIONS RECEIVED

- 3.1 18/00461/ENF, 4 Oakdell. Appeal against serving of Enforcement Notice relating to the construction of a timber bridge over the brook.

3.1.1 Background

Application site is a detached two storey dwelling, part of a small development recently built. The Fairlands Valley Stream runs across the rear of Nos. 3 and 4, to the west of the dwellings. Land to the west of the stream, up to the boundary with St Margaret Clitherow Roman Catholic School is in the same ownership as the Oakdell dwellings and was sold by the Council when the main site was sold. The stream is within a wide and relatively deep channel. The bridge structure, which is more or less the full width of the plot, has been built across this channel.

3.1.2 Enforcement Notice

The original Reserved Matters planning application shows a chain link fence across the eastern bank of the stream but this has not been erected. As the original permission was not included, the Inspector was not aware of any conditions relating to this fence, however they stated that if there is a condition for the erection of this fence then the Council have other means to ensure this happens. With no condition in place, it is the appellants choice to erect the fence or not. It is therefore beyond the power of the enforcement notice to request this fence is erected and the enforcement notice will be varied to that effect.

The Inspector noted that the allegation refers to “a total footprint of 64.4m square” when it should read “a total footprint of 64.4 square metres” and the enforcement notice will be corrected accordingly.

3.1.3 Appeal Grounds

Ground (b) known as “legal grounds” – the burden of proof is on the appellant to show that on the balance of probabilities the matters stated in the enforcement notice have not occurred as a matter of fact.

It was argued that the bridge structure is entirely on land owned by the appellant and this is all within his residential curtilage. The bridge is required to provide safe access across the stream. The structure should be regarded as Permitted Development. The Inspector saw the bridge on his site visit so that it very clearly exists. He stated that consequently ground (b) fails as the breach has occurred as a matter of fact. However, the appellant does not dispute the development has not occurred, rather that it is not a breach of planning control and the appeal should therefore be assessed under ground (c).

Ground (c) is that the development is not a breach of planning control and like ground (b) the burden of proof remains the same.

The outline planning permission for the development shows the site outlined in red, and the land within the same ownership but outside the application site outlined in blue. The red and blue lines are contiguous along the eastern side of the stream. The blue lined land is within a wildlife site in the Local Plan and described as essential to the urban structure of the town. The approved plan in the reserved matters application shows a chain link fence along this eastern boundary and the plan is annotated to say the area in blue is to be retained as a wildlife site.

The Inspector confirms that the Land Registry entry clearly identifies the appellant owns all the land to the rear of the property, up to the boundary with St Margaret Clitherow school with the edge of the eastern bank roughly 7m from the rear outshot of the dwelling.

The outline planning permission changed the use of the land enclosed in the red line area from sui generis garage block to residential, however the Inspector points out that the blue lined area was excluded from this change of use with the intention for it to be fenced off. The Inspector states that the residential curtilage only extends as far as the eastern bank of the stream and the land to the west is recognised as having a different function; that is, a designated green link and not domestic garden land.

The Inspector goes on to say that the fact of ownership does not predicate use of the land, or change of use. He was of the opinion that the land to the west of the red line area in the outline permission, and the intended chain link fence in the reserved matters application does not form part of the residential curtilage of No.4 Oakdell.

The appellant argued that the bridge structure should be permitted development, however the Inspector affirms that the allowances of permitted development only apply to residential curtilage and as he found the land in question to not be residential curtilage, it follows that the permitted development rights are not available in this instance.

He concluded that on the balance of probabilities the development is in breach of planning control and it follows that had the appeal been made on ground (c) it would have failed.

Whilst the appellant argued that a bridge was necessary for the safety of his family crossing the stream and is concerned a child may fall into the water, the Council made clear that a plank bridge might be provided and the chain link fence in the approved plan for the reserved matters application would address these concerns.

3.1.4 Decision

The Appeal is dismissed with variations to the enforcement notice (decision attached).