

Meeting: Planning and Development
Committee

Agenda Item:

Date: Wednesday 4 November 2020

INFORMATION REPORT - APPEALS / CALLED IN APPLICATIONS

Author – Linda Sparrow 01438 242837

Lead Officer – Zayd Al-Jawad 01438 242257

Contact Officer – Gemma Fitzpatrick 01438 242270

1. APPEALS RECEIVED

- 1.1 20/00175/FPH, 86 Marlborough Road. Appeal against refusal of permission for the construction of a garage to the front of the property.

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.

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.

- 2.2 19/00529/FPH. 2 Whitney Drive. Appeal against refusal of permission for a part two storey, part first floor side extension.

3. DECISIONS RECEIVED

- 3.1 20/00102/ENF, Land between Watercress Close, Coopers Close and Walnut Tree Close. Appeal against serving of Enforcement Notice relating to the unauthorised erection of 2m high hoarding enclosing open space between all three roads.

3.1.1 Enforcement Notice

The notice states a breach of planning control under Section 171(1)(a) of the Act that development was carried out without consent. However, paragraph 3 of the notice refers to a contravention of the original planning consent (Ref. 87/2/0053/87). The Council confirmed the notice is directed solely at operational development and no material change of use or breach of condition is alleged. For the purposes of clarity, the Inspector deleted the second sentence of paragraph 3 which references the original planning permission and included information contained in paragraph 4. She noted that the correction would not alter the purpose of the notice and subsequently there be no injustice to either the Council or the appellant.

3.1.2 Appeal on Ground (c)

The appeal alleges that the matters in the notice, the erection of 2m high hoarding at the site entrances do not constitute a breach of planning control. The appellants case was that the fencing is not adjacent to a highway and is therefore Permitted Development under Class A, Part 2, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Further,

the land is in private ownership and there are no planning conditions which restrict the use of the land, or that require it to be accessible to the public. The Council confirmed this to be the case.

The Council considers the hoarding to have been erected adjacent to a vehicular highway and that it is not permitted development as it is over 1m high when adjacent to said vehicular highway.

The Inspector visited the site and noted the hoarding had been removed from the land, however the posts to which it had been attached were still in place and she was able to see clearly where it had been located. She confirmed there was no dispute over the fact the hoarding was over 1m in height and that the issue turns to the interpretation of the term "adjacent to".

The appeal documents describe the hoarding as being within 5.1m of the highway edge. The Council's Planning Officer report states between 1.5m and 2m from the highway verge on Watercress Close and Coopers Close whilst the appellants statement of case gives distances of 6.2m and 5.1m respectively. The appellant states case law establishes a distance of 2m from the highway as being "adjacent to" and the Council stated case law and appeal decisions take the view that if the boundary treatment or enclosure in question to the first line of boundary on a site would be classed as being adjacent to a highway.

The Inspector pointed out that the GPDO does not define "adjacent to" and that the normal everyday dictionary definition is "being near or close". It is therefore a matter of fact and degree and is case dependant.

The Inspector determined, from her site visit, that the hoarding at the site entrance of Watercress Close was at least 3m from the highway edge. Taking account of the position of the hoarding and its relationship to adjacent soft landscaping boundary enclosures of neighbouring dwellings, she concluded that the hoarding was sufficiently distanced from the highway that it was not adjacent to a highway and is therefore permitted development. She concluded the same in relation to the hoarding at the entrance of Coopers Close as it was evidenced to be more than 2m from the highway edge.

Whilst she noted the representations from local residents and the Council, planning matters are not relevant to, and cannot be considered, in an appeal on ground (c).

3.1.3 Conclusion

For the reasons given above, the Inspector concluded that the appeal on ground (c) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting a breach of planning control. Subsequently, the enforcement notice will be corrected and quashed. In these circumstances, the appeal on grounds (f) and (g) do not need to be considered.

Appeal decision attached.