

Meeting: Planning and Development
Committee

Agenda Item:

Date: Wednesday 3 February 2021

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 20/00384/FP, 8A Magellan Close. Appeal against refusal of permission for the Variation of condition 11 (no new windows and doors) attached to planning permission 16/00791/FP to allow insertion of a roof light and gable window to be added to the dwellings.
- 1.2 20/00146/FP, 330 Canterbury Way. Appeal against refusal of permission for the erection of 1no. one bedroom dwelling.

2. DECISIONS AWAITED

- 2.1 20/00175/FPH, 86 Marlborough Road. Appeal against refusal of permission for the construction of a garage to the front of the property.
- 2.2 20/00228/FPH, 30 Orchard Crescent. Appeal against refusal of permission for two storey front, side and rear extensions.

3. DECISIONS RECEIVED

- 3.1 17/00730/ENF and 18/00045/FP, 18B Boulton Road. Appeal against serving of Enforcement Notice relating to an unauthorised gym operating from the premises and refusal of permission for a retrospective change of use from D1 to D2.

3.1.1 Preliminary Matters/Enforcement Notice

One of the reasons for refusal/enforcement was the Council's concern that the change of use would affect the supply of employment space where a demand for office and commercial floorspace could be likely to accommodate the growth of the town over the Local Plan period. The appeal premises were deemed by the Council to be office (Class B1 (a)) and the gym caused lower employment density.

The Council obtained legal advice and confirmed it is now satisfied that the lawful use prior to the appeal development was a training centre (Class D1). As such, the Council does not dispute the appellant's argument that a change of use from D1 to D2 does not result in a loss of employment space. The Council confirmed they do not wish to pursue this issue further. Consequently the Inspector stated that this matter was no longer a principal important controversial issue between parties and would not form a main issue in his decision.

Therefore, the Inspector used his powers of duty to remove reference to office (Class B1 (a)) from paragraph 3 of the enforcement notice. It is well-established law that enforcement notices relating to change of use do not need to reference the 'base' use and as there is no longer a dispute over the base use, the Inspector felt there would be no injustice in removing it.

The Use Class Order (UCO) was recently amended and provides that as the application and deemed application for a change of use were made prior to 1 September 2020, they must be determined by reference to the uses or use class referred to in those applications at time of submission.

Since the refusal/enforcement notice, the Local Plan (2019) has been adopted and replaces the Stevenage District Plan Second Review 1991-2011 (2004) which was in force at the time of the applications.

3.1.2 Main Issue

The main issue in respect of both appeals is whether or not it has been demonstrated through the 'sequential test' that the development could not be accommodated in any available premises within town centre sites, edge of centre sites or other sequentially preferable sites.

3.1.3 Reasons

The appeal site is a detached building within the Pin Green Employment Area, with generous external space giving 41 car parking spaces and located over 3km from the town centre. Both parties agree the gym use is a main town centre use and the site is not in, or at the edge of, a town centre.

The National Planning Policy Framework (NPPF) in Chapter 7 seeks the vitality of town centres and that the decisions support the role of town centres as the heart of communities. The Inspector placed significant weight, in favour of the appeal development, upon the fact that the Council's evidence does not clearly identify any planning harm caused by the change of use within this context. The Council confirmed the limited size and scale of the gym and its impact on the town centre and the regeneration proposals would be negligible.

The appellant conducted a sequential analysis in line with paragraph 86 of the NPPF and Policy TC13 of the former Local Plan (2004). The Inspector found there was plenty of evidence that the appellant had actively engaged with the Council in what He considered to be a systematic and genuine evaluation of potential relocation sites. He found the analysis to be proportionate and appropriate in line with the National Planning Practice Guidance (NPPG).

The Council argued the appellant did not fully consider relocation sites, however the Inspector was satisfied that the appellant demonstrated the flexibility required by the NPPG. He accepted the appellants submission that other sites were unsuitable for the gyms operation or else so uneconomical to be unviable. He accepted the appellant's conclusions on rejecting inappropriate properties which included sites with inadequate free car parking and agreed that this business use generally demands free car parking and without such, viability would be an issue. Further, He also accepted that noise and disturbance from a gym use renders some of the sites unsuitable being located close to commercial units and/or residential properties.

The NPPG indicates that viability is a factor in the sequential test. The Council argued more effort should have been made to negotiate rents in the town centre or other sequentially preferable locations but the Inspector placed significant weight that the NPPG advises Councils to be flexible and realistic in applying the test as town centre locations can be more expensive. The appellants business has an annual turnover of around £60,000 and the Inspector noted that in this regard it was not unreasonable of the appellant to have refrained from rental negotiations as secondary frontage units were unviable at more than £92,000/year.

The appeal property is accessible and reasonably well-connected to the town centre. The Inspector noted from his site visit a bus stop on Great Ashby Way is within walking distance which has a regular service to the town centre. He went on to note that whilst some of the public footpath runs through woodland, there is a reasonable level of natural surveillance from the highways. The Inspector was unconvinced that the natural environment makes public transport uninviting. Further, the Highways Authority raised no concerns on highway safety grounds given the movements of large vehicles near the site.

For these reasons, the Inspector found it had been demonstrated through the sequential test that the development could not be accommodated elsewhere and as such there was no conflict with Policy TC13 of the former Local Plan (2004). He stated that the site is well-connected by multi-modal means to the town centre in accordance with Policy TC13 and for the same reasons the development accords with Chapter 7 of the NPPF (paragraphs 86, 87 and 90).

3.1.4 Conditions

The Inspector placed a condition on each permission to restrict the use to a gymnasium only following the sequential test and any other use has not been tested and may harm the vitality and viability of the town centre.

The Inspector placed a condition on each permission requiring a scheme of cycle parking facilities to ensure the development is acceptable in planning terms. He worded the condition such that it can be enforced if the requirements are not met.

The Council suggested a condition to retain the 41 car parking spaces but the Inspector was not persuaded that this was necessary to make the development acceptable in planning term as the Council's committee report indicated 30 spaces would be required to be in line with the adopted Parking Standards SPD (2012). Therefore the Inspector imposed a condition requiring no less than 30 spaces to be retained.

3.1.5 Conclusion

For the reasons given above The Inspector concluded that Appeal A should succeed on ground (a) and planning permission will be granted, the enforcement notice was corrected before being quashed and appeal B is allowed.

3.1.5 Award of Costs

The Inspector found that the Council had behaved unreasonably resulting in unnecessary and wasted expense and a full award of costs is justified.

In exercise of powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, the Inspector ordered that the Council shall pay the appellant the costs of the appeal proceedings.

3.2 **19/00529/FPH. 2 Whitney Drive.** Appeal against refusal of permission for a part two storey, part first floor side extension.

3.2.1 Main Issues

The effect of the appeal development on the character and appearance of the area.

3.2.2 Reasons

The site is a detached dwelling on a prominent corner position. The generally well-spaced dwellings in reasonably sized plots give the surrounding area a spacious appearance.

The proposed extension would be above the hall and garage and extend to the rear. The finished property would result in a significant projection of two-storey built form of an uncharacteristic scale from the prevailing pattern of development in the area. The Inspector stated that the resulting dominance on this prominent corner plot would cause material visual harm to the areas characteristic spaciousness.

Further, he stated that the substantial areas of white painted render to the front elevation would exacerbate the visual effect of excessive scale as it would draw attention to the dwelling in an area of muted appearance.

The Inspector found that the development would cause unacceptable harm to the character and appearance of the area contrary to Policies SP8 and GD1 of the adopted Local Plan (2019) and the adopted Design Guide (2009).

3.2.3 Other Matters

The Inspector noted that he was minded to view another property in the vicinity which is clad and rendered with modern materials; however He stated that this property is in a less prominent position and is further screened behind vegetation. He stated that the scale and proportions differ from the appeal site and therefore does not have sufficient similarities to be used to draw comparisons. Consequently the Inspector found that the other development did not alter his conclusions on the appeal site.

He acknowledged the need for more space in the appeal household and had sympathy; nevertheless planning in general is concerned with land use in the public interest. It is probable that the development would remain after the current personal circumstances cease to be material and for these reasons the Inspector can only attached minimal weight to this factor.

The Inspector found no material harm to the living conditions of the occupiers of neighbouring properties and He acknowledged the lack of neighbouring objections. However the Inspector noted that these are neutral matters which consequently do not attract weight to the decision.

The Inspector advised that it was suggested to him to add a condition relating to materials in order to secure a visually acceptable appearance. However He went on the state that the NPPG sets out it is inappropriate to impose a condition which would modify the development in a way that makes it substantially different from that set out in the application. Accordingly, this suggestion is not capable of rendering the proposal acceptable.

3.2.4 Conclusion

Appeal dismissed. Decision notice attached.

3.3 **20/00269/FPH. 1 The Noke.** Appeal against refusal of permission for a two storey side and rear extension.

3.3.1 Main Issues

The effect of the proposal on safety and convenience of highway users.

3.3.2 Reasons

The appeal site is an end of terrace dwelling situated close to the junction of The Noke and Broadwater Crescent. The proposal involves the erection of a two storey wrap around extension and would increase the number of bedrooms from 3 to 5.

Policy IT5 of the adopted Local Plan (2019) requires proposals to conform with the adopted Car Parking Provision SPD (2020). A three bedroom dwelling requires 2 spaces and 4+ bedroom dwellings require 2.5 spaces (rounded up to 3 spaces).

The Inspector noted the property is within accessibility zone 3 so a reduction of 25% in provision may be appropriate but regard must be had to the characteristics of the area and existing residential car parking problems are not exacerbated.

The site has no off-street parking facilities and the Inspector shared the Council's view that it would be impractical to provide any on site and no provision is made elsewhere. When the Inspector made his site visits (afternoon and evening) He noted that parking conditions were congested to the extent that vehicular access along the street was difficult in places and He had no reason to believe these conditions were unusual. He stated that in this regard, it would be inappropriate to reduce the standard required in the SPD below 100% provision.

He went on to acknowledge that appellant's four children who currently share 2 bedrooms may own cars in the future. However, He felt that the capacity of the property to accommodate adults would be greater if the property was extended. He therefore considered that the proposal would be likely to result in an increase in demand for on street parking, albeit not immediately. Further, He stated that given the existing congested conditions, this increased demand would lead to parking in appropriate locations close to junctions to the detriment of free flowing traffic and highway safety.

The Inspector concluded that the proposal would conflict with the SPD and Policy IT5 of the Local Plan and would cause unacceptable harm to the safety and convenience of highway users and in this respect would also conflict with the aims of the NPPF.

3.3.3 Other Matters

Whilst the Inspector noted the appellants desire to provide additional space for the children, in His judgment the benefits of the proposal, although important to the appellant, would not outweigh the harm He identified.

The Council indicated the proposal would not harm the character and appearance of the area and its impact on neighbouring amenity would be acceptable. The Inspector agreed with the Council's findings in this regard.

Nonetheless, neither of these or any other matters raised would be sufficient in the Inspector's opinion to outweigh the conclusions reached on highway safety.

3.3.3 Conclusion

Appeal dismissed. Decision notice attached.