

Meeting: Planning and Development
Committee

Agenda Item:

Date: Tuesday 31st October 2023

INFORMATION REPORT - APPEALS / CALLED IN APPLICATIONS

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1. APPEALS RECEIVED

1.1 None.

2. DECISIONS AWAITED

2.1 21/01152/ENF. 68 Basils Road. Appeal against the serving of an enforcement notice to remove the first floor of the two-storey rear extension which was refused under planning permission reference number 21/01256/FPH.

2.2 21/01256/FPH. 68 Basils Road. Appeal against the refusal of planning permission for the retention of a part two storey, part single storey rear extension.

2.3 21/01025/ENFAPL, 7 Boxfield Green. Appeal against the serving of an Enforcement Notice relating to the development not in accordance with approved plans under planning permission reference number 17/00734/FPH.

3. DECISIONS RECEIVED

3.1 **22/00717/ENFAPL, 134 Marymead Drive.** Appeal against the serving of an Enforcement Notice relating to the unauthorised erection of an outbuilding and front extension.

Decision

3.1.1 The enforcement notice is upheld, and the appeal dismissed subject to amendments as follows:

- Deletion of Section 5(ii), and its substitution with the following
(ii) Remove the from the land all building materials arising from compliance with requirement (i) above, and restore the land / dwellinghouse to its condition before the breach took place by repairing the front elevation of the dwellinghouse and making good following the removal of the extension.

The Notice

3.1.2 The appellant stated it was not clear which buildings are the subject of the notice, however, the Inspector found that the 1:500 scale plan that accompanied the notice was sufficiently accurate and clear.

3.1.3 The appellant stated that it was not clear what is required by section 5(ii), however, the Inspector found that the requirements were sufficiently clear.

Appeal on Ground (c)

- 3.1.4 These are appeals made on the basis that the matters alleged do not amount to a breach of planning control.
- 3.1.5 The appellants case is that the alleged breaches are immune from action through the passage of time and the Inspector considered those matters under ground (d) below. No evidence was found for planning permission or a Lawful Development Certificate for the front extension or outbuildings and the Council's case is that they fail to be permitted development due to their size and proximity to the boundary.
- 3.1.6 The Inspector concluded that on the balance of probabilities, the development alleged is a breach of planning control and therefore the appeal fails on ground (c).

Appeal on Ground (d)

- 3.1.7 These are appeals that are made on the basis that at the time the notice was issued, no action could be taken in respect of the alleged breaches of planning control.
- 3.1.8 The appellant considered that if the matters alleged to be breaches in planning control are, at least in part, immune from action through the passage of time. That would require the appellant to provide evidence that the front extension and outbuilding had been completed four or more years ago.
- 3.1.9 The appellant admitted he thought the last structure built was within 2018 but he couldn't be sure and failed to provide sufficient evidence. The Council evidenced the alleged breach with details of a formal complaint being received in June 2020 regarding the construction of the front extension. The Council also referred to previous enforcement investigations in 2019 relating to outbuildings in the rear garden.
- 3.1.10 Considering all the evidence available, the Inspector concluded that there is insufficient evidence from the appellant to demonstrate, on the balance of probabilities, that the extension and outbuildings are immune from action and the appeal fails on ground (d).

Appeal on Ground (f)

- 3.1.11 These are appeals that are made on the basis that the steps required by the notice exceed what is necessary to remedy any breach.
- 3.1.12 The Council considers that the requirements of the notice were the minimum needed to remedy the alleged breaches. The Inspector stated that a requirement to return the land to its previous condition would be sufficient but that to request anything further, such as levelling the ground and re-seeding, would not be necessary.
- 3.1.13 The Inspector concluded that, in so far as the notice requires the levelling of the ground and re-seeding the grass, the steps required by the notice exceed what is necessary to remedy the breach. He concluded that he would vary the enforcement notice prior to upholding it and as such, the appeal succeeds to that extent in regards to ground (f).

Appeal on Ground (g)

- 3.1.14 These are appeals that are made on the basis that the time for compliance with the requirements of the notice is too short. The notice in question sought compliance within 12 weeks.
- 3.1.15 The Inspector found on his site visit that the front extension and outbuildings were of a simple construction and restoration works would not be extensive. The appellant did not argue that they could not be removed, nor that restoration works could not be achieved in 12 weeks.

- 3.1.16 nevertheless, the appellant argued that he has a passion for tractors and the site is used for their storage, repair and maintenance and that he needs the buildings for shelter and tool/equipment storage. Alternative storage would take approximately 12 months to find.
- 3.1.17 The Inspector found no compelling evidence of the appellants need for either the extension or the outbuildings, or of the consequences of their removal. He stated that there was a need to balance the appellants case for additional storage against the harm to the conservation area and great weight must be applied to the conservation of the designated heritage asset. He concluded that the appellants case for more time would not outweigh the harm caused to the character and appearance of the conservation area and therefore 12 weeks is a reasonable timeframe and the appeal fails ground (g).

3.2 **23/00323/FPH, 23 Park View.** Appeal against the refusal of planning permission for a two storey side extension.

Decision

3.2.1 The appeal is allowed and planning permission is granted for the two storey side extension subject to conditions relating to 3 year time limit for implementation, to be carried out in accordance with the now approved plans, and subject to materials being submitted and approved prior to the commencement of development.

Reasons

- 3.2.2 The Inspector judged that the marginal difference between the remaining space at the side (4.3m) compared to No.11's remaining space (5m) would not cause harm to the character and appearance of the area. He went on to say that the proximity to the boundary was also not harmful and there is no consistent building line which it would breach. Within that context, he found no harm to arise from the proximity to the boundary.
- 3.2.3. The Inspector also found that the crown roof proposed would be very similar to an extant permission at the appeal site (21/00607/FPH) and therefore the proposed roof would be so similar to that of the approved scheme that its effects on the surrounding area would be the same.
- 3.2.4 Overall, he concluded that the proposal would not unacceptably reduce the space around the extension and would not be too close to the boundary within its local context. The impact on the character and appearance of the area would be very similar to that of the previously approved 2021 permission.

Conclusion

3.2.5 For the above reasons, the Inspector concluded that he found no harm to arise from the proposed extension and therefore, subject to conditions, the appeal is allowed and planning permission granted.