

Meeting: Planning and Development
Committee

Agenda Item:

Date: 5 June 2025

INFORMATION REPORT - APPEALS / CALLED IN APPLICATIONS

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1. APPEALS RECEIVED

- 1.1 24/00893/FP, Land Adjacent to 175 Vardon Road. Appeal against refusal of planning permission for the erection of a pair of semi-detached two-bedroom dwellings.
- 1.2 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.

2. DECISIONS AWAITED

- 2.1. 24/00469/FPH, 7 Milestone Close. Appeal against refusal of planning permission for a single storey front extension.

3. DECISIONS RECEIVED

- 3.1 22/00307/ENFAPL (23/00035/ENFAPL), Car park to side of 10 Aintree Way. Appeal against the serving of an Enforcement Notice relating to the erection of a car port.
 - 3.1.1 Enforcement Notice to be Amended with appeal DISMISSED.
 - 3.1.2 Amendments required:
 - i) Deletion of wording in paragraph 3 and replacement with “without planning permission, the erection of a structure on the Land marked in red pen”
 - ii) Renumbering of paragraphs 4, 5, and 6 as paragraphs 5, 6, and 7.
 - iii) New paragraph 4 to be inserted detailing reasons for issuing enforcement notice.
 - 3.1.3 The original enforcement notice was issued by the Council on 14 October 2022 which was found on appeal to be a nullity. The Council consequently issued a further enforcement notice to rectify errors identified by the previous Inspector at appeal.
 - 3.1.4 Appeal made under ground (b) is made on the basis that a breach in planning control has not occurred. The Inspector noted the appellants’ grounds that the structure is not permanent but having seen photographs from December 2022 and seen the structure on a site visit, concludes the erection of a permanent structure has occurred and ground (b) fails.
 - 3.1.5 Appeal made under ground (c) that a breach has not occurred as erection of permanent structure not occurred. The Inspector found that the structure as erected was substantial in

size and visible from multiple vantage points. The Inspector has seen photographic evidence of a metal rail cemented to the ground upon which the structure was then fixed.

- 3.1.6 The Inspector found that the size of the structure amounts to a characteristic of permanence rather than a temporary structure. As such, the Inspector concluded that the structure amounts to development under Section 55 of the Planning Act and permission is required.
- 3.1.7 The Inspector found the structure did not benefit from permitted development under Part 4, Class A as it was not related to operational developments. Further, they found it did not benefit from Part 1, Class E permitted development as although an outbuilding, it is not located within the curtilage of dwellinghouse.
- 3.1.8 Appeal under ground (c) fails because, as a matter of fact and degree, a permanent structure has been erected.
- 3.1.9 The Inspector stated that the presence of other buildings in the area is not of relevance to the case and neither is the structures appearance or whether it is incongruous to the street scene or not.
- 3.1.10 They concluded that the appeals under grounds (b) and (c) should not succeed and the enforcement notice is upheld subject to corrections.

- 3.2 23/00824/CLEU, 40A Vinters Avenue. Appeal against the refusal to issue a Lawful Development Certificate for the existing use of the premises as 4no. self-contained studio flats. *Determined following a Public Inquiry on 11th February 2025.*

23/00771/ENF, 40A Vinters Avenue. Appeal against the serving of an Enforcement Notice relating to the development under planning permission reference number 23/00824/CLEU. *Determined following a Public Inquiry on 11th February 2025.*

Officer Note: Please note that both appeals for Vinters Avenue are covered by the one appeal decision notice and are dealt with together in the following paragraphs.

- 3.2.1 The Enforcement Notice (EN) alleges the change of use of the land as four self-contained flats, but the EN does not allege a *material* change of use of the land and it therefore follows that the allegation in the notice would not constitute development for the purposes of Section 55(1) of the 1990 Act.
- 3.2.2 Section 57 of the 1990 Act states permission is needed for the carrying out of development. Given that alleged breach of planning control has been found to not be development, planning permission was not required and the EN is therefore defective in that respect.
- 3.2.3 However, the appellant understands the allegation to be intended to refer to a material change of use and as such the Inspector was satisfied that a correction of the EN could be undertaken without injustice.
- 3.2.4 The Inspector found that the requirement under part (iii) of the EN to dispose of debris to a licensed refuse facility was not required as it is not necessary to remedy the breach.
- 3.2.5 The Inspector found the requirement under part (iv) to bring the property back into use as single family dwelling as per planning permission 15/00125/FP was not applicable as an EN cannot require a building to be brought into an alternative use.
- 3.2.6 Under Section 171B(2) of the 1990 Act, where a breach of planning control consisting of a change of use of any building to a single dwelling house, no enforcement action may be taken after a period of 4 years.

- 3.2.7 The Council's argument is that upon completion of the building, it was never used as a single dwelling before being occupied as four flats and therefore the building never experienced a *material* change of use because its first use was that as four flats and the applicable period of immunity is therefore 10 years, not 4 years.
- 3.2.8 The Inspector found that the building was completed as a single dwelling in accordance with the 2015 planning permission and its lawful use at that time was a single dwelling, but the question is, what was the lawful use at the time of overall completion of all building works?
- 3.2.9 Taking all evidence into account, the Inspector concluded that on the balance of probabilities, the building was completed as a two-bedroom dwelling and had that use at the time of its completion in February 2017. The subsequent material change of use from single dwelling to four flats occurred more than 4 years prior to the issuing of the EN and the LDC application. It follows then that on the date of issuing the EN and the date the LDC application was made, it was too late for the Council to take action.
- 3.2.10 Appeal A – the appeal is allowed, and a Certificate of Lawful Use is issued.
- 3.2.11 Appeal B – the EN is quashed as the Council issued it out of time for such action.

3.3 Decision for Costs Associated with the Vinters Avenue Appeals

- 3.3.1 The Inspector found that the appellant's evidence throughout the appeal process, and their cooperation with the Council's investigation was inconsistent, amounting to unreasonable behaviour.
- 3.3.2 The inconsistent evidence regarding when the appellant lived at the property required the Council to test the evidence at great length during the inquiry, at great expense to the Council. The appellant's unfamiliarity with appeal proceedings does not justify their inconsistent evidence.
- 3.3.3 The Inspector concluded that the appellant's unreasonable behaviour, resulting in unnecessary or wasted expense, has occurred and a partial award of costs is warranted.
- 3.3.4 It is therefore ordered that the appellant is to pay the Council the costs of the appeal proceedings, limited to that part of the inquiry that dealt with the appellant's claims of having lived at the appeal property.