

REPORT TO: PLANNING COMMITTEE

Date of Meeting: 3 October 2016

Report of: Assistant Director City Development

Title: Appeals Report

Is this a Key Decision?

No

Is this an Executive or Council Function?

No

1. What is the report about?

- 1.1 The report provides Members with information on latest decisions received and new appeals since the last report.

2. Recommendation:

- 2.1 Members are asked to note the report.

3 Summary of Decisions received:

- 3.1 The following decisions have been received since the last report:

35 Bathern Road, Exeter

Appeal Refs: APP/Y110/C/16/3142196 (Appeal A) and APP/Y1110/C/16/3142197 (Appeal B).

The breach of planning control as alleged was operational development without planning permission on the land, namely: rear dormer extension.

The appeal was made against an enforcement notice the requirements of which were to:

- i. Permanently remove a rear dormer extension
- ii. Reinstate the roof using materials which match the roof
- iii. Remove from the land all materials

Appeal A is proceeding on the grounds set out in section 174(2) (a) and (c) of the TCPA 1990 as amended. Since prescribed fees had not been paid with the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended in respect of Appeal B did not fall to be considered. Appeal B proceeded on the grounds set out in section 174(2) of the TCPA 1990 as amended.

Appeals A and B on the ground (c)

An appeal on this ground is on the basis that alleged development does not amount to a breach of planning control. The planning merits which form the overwhelming majority of the comments made by third parties fall to be considered under the appeal on ground (a).

A large dormer extension has been installed which includes two large windows each with a Juliet balcony and two much smaller windows; with Velux roof lights inserted into the front roof slope. Firstly, it is asserted that the dormer is 'permitted' development and, secondly, that those permitted development rights have not been removed by any condition on a relevant planning permission.

The Inspector stated that the Council had not submitted an appeal statement or any other information apart from the notice itself to explain why the notice had been issued and

concluded that the Council did not contest the appellant's evidence. That was not the case, this matter has been raised as a complaint with the Planning Inspectorate.

The Inspector established that the development should be assessed against the 2015 GPDO. This document sets out six limitations that would prevent development being permitted by the Class (Limitations a, b, c, d, e, and f). To conflict with (c) the development would have to be beyond the plane of the existing roof slope of the principal elevation. Limitation (e) prohibits provision of a veranda, balcony or raised platform. A Juliet balcony would be permitted development so there would be no conflict.

The Inspector then covered the issue of materials used and concluded that, whilst a matter of judgement, his view was that they are sufficiently similar in appearance to those of the host dwelling for there to be no conflict with (a).

The Inspector concluded that the development carried out is permitted by the 2015 GPDO. This was not contested by the Council, however these rights were removed.

He then covered the second contention that permitted development rights had been removed by a condition on a relevant planning permission. The Council had provided two 'approval of reserved matters granted' decision notices (refs: 03/1124/03 and 05/1286/02). A condition states that "*Notwithstanding the provisions of the T&CP GDO Order (sic) 1995 or any Order revoking and re-enacting that Order, no extension, garages or other development shall be carried out within the curtilage of the dwelling(s) without the formal consent of the LPA*". The reason given for the condition is '*in order to protect the visual and residential amenities of the surrounding area and to prevent overdevelopment*'.

Circular 11/95 gave the relevant guidance in 2004 and 2005 when these permissions were granted. This stated that conditions should only be imposed where they satisfy all the tests described in the Circular and set out in brief in para 14. The essence of the appellants' case was that the condition was not precise and therefore unenforceable. The tests included in that Circular are still relevant.

The Inspector noted that in view of the density of the development and the relatively small plot sizes, that it did not seem unreasonable for the Council to have restricted the permitted development rights. However, he considered that the way the condition is worded strongly suggested that it is only the pd rights within the curtilage of the dwellings that is being restricted.

He noted that the heading to Schedule 2, Part 1 of the 2015 GDPO is 'Development Within the Curtilage of a Dwellinghouse' and only some of the Classes A to H refer to 'curtilage'. Class B, 'additions etc to the roof of a dwellinghouse' is not one of them. It may be that either or both of the terms 'extensions' and 'other development' in the condition are intended to embrace additions to the roof slopes. However, the fact that the condition was ambiguous on the point and therefore open to interpretation, meant that it was imprecise and therefore unenforceable.

The appellants' contention was therefore correct and the appeals must succeed on this ground.

His conclusion states that for the reasons given in his full report the appeals should succeed on ground (c). Accordingly the enforcement notice should be quashed. In the circumstances, the Appeal A application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended did not need to be considered.

412A Topsham Road, Exeter

The application sought a roof extension, two side elevation dormers and loft conversion.

The Inspector's decision noted that both side facing dormers would be set back from the front façade of the property. Given their length and size, extending from the eaves almost to the ridgeline, each would dominate its respective roof. Their very bulky, rectilinear form would contrast markedly with the host property's pitched roof and their side and front facing walls would be largely unalleviated by fenestration or architectural detailing. His view was that, given their dimensions and elevated position, both side dormers would be clearly visible from Topsham Road. The south facing dormer would be particularly prominent approaching from that direction given the gap to No 414 and that dwelling's lower height. To the rear, the host's gabled form would be almost entirely subsumed by the proposed dormer thus giving the building very rectilinear, three storey form, which would be at odds both with the existing dwelling and the area's prevailing character. He considered that the scheme would harm the character and appearance of the host property and the area, and would give the building an incongruous and very top heavy form compared to others nearby.

The Inspector commented that the proposal would conflict with national and City Council policies. In his view the modest additional accommodation benefit would not outweigh the significant harm the development would cause.

4. New Appeals:

4.1 There are no new appeals to report.

Assistant Director City Development

Local Government (Access to Information) Act 1985 (as amended)

Background papers used in compiling the report:

Letters, application files and appeal documents referred to in report are available for inspection from: City Development, Civic Centre, Paris Street, Exeter

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