

REPORT TO: PLANNING COMMITTEE
Date of Meeting: 12 February 2018
Report of: City Development Manager
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 **2 and 3 Lymeborne Avenue** – Two appeal cases seeking retrospective consent to regularise discrepancies between the approved schemes (refs. 15/0976/FUL & 15/0975/FUL, respectively) and the as built structures – have been dismissed by the Planning Inspectorate.

Most notably, the discrepancies included a slightly larger overall height and footprint and the insertion of first floor French doors to the front elevation of each unit. The appeal cases were concerned with these inconsistencies rather than the principle of development or conversion which had already been established by the extant planning permissions.

The developments in question concern two adjoining garages located in the rear garden of both properties - each garage has a visual presence and prominence in the public realm, perhaps most notably when viewed from the Heavitree Pleasure Ground, a large open public park located on the opposite side of Lymeborne Avenue.

The Inspector considered that the two main issues in both appeal cases were the effect of the first floor extensions on the character and appearance of the surrounding area and the effect of the first floor glazed French doors in the front elevation on the living conditions of neighbours in relation to overlooking and privacy.

It was recognised by the Inspector that the difference between the approved plans and 'as built' structures in terms of height and massing is marginal and barely distinguishable in the spatial context of the immediate area. The palette of materials proposed for the garage extensions, in the context of the diversity of materials present in the locality, was also considered to be acceptable. The side and rear elevation windows do not impact upon the street scene and are deemed to be appropriately scaled and suitable for domestic outbuildings.

The Inspector considered the front-facing French doors would have a visual impact upon the character of the street scene and maintained that the fenestration treatment would not relate well to or reinforce the local distinctiveness of the surrounding area - the doors would be incompatible with and would detract from the established traditional character of the street scene in Lymeborne Avenue. He noted that the appeal case proposals included French doors that be fixed shut with obscure-glazing. This would cause no adverse impact upon the privacy of neighbouring properties and thus there would be no conflict with policy DG4 of the Exeter Local Plan First Review (LP).

However, the Inspector concluded that the proposals conflict with policy DG1 of the Exeter Local Plan Review (the Local Plan) and dismissed the appeal on that basis.

- 3.2 **77 Thornpark Rise** – Application Ref: 17/0193/FUL. The application was for a 4.8m depth single storey pitched roof extension on a terraced property, plus 1.2m of raised decking, totalling 6m depth.

The application was refused as the scale of the proposed development, by virtue of its height, length and proximity to the adjacent properties, was believed to have an unacceptable impact on the amenities of the adjacent neighbours, reducing the natural light to the rear of No 79 in particular; and having an overbearing impact on both immediate neighbours.

The Inspector dismissed the appeal agreeing that the extension would be readily apparent from Nos. 75 and 79 and likely to reduce sunlight to No 79. The Inspector concluded that the proposal would appear somewhat overbearing and visually intrusive from ground floor windows and the patio areas of adjoining properties, preventing these neighbours from feeling at ease within their homes and outside amenity areas immediately alongside, despite the outlook afforded by the large rear gardens.

The Inspector concurred with the LPA's conclusion that the proposal would conflict with Policy DG4 and that the appeal should not succeed.

- 3.3 **11 Medley Court** – Application Ref: 17/0886/FUL. The application was for a single storey rear extension that would extend two metres from the rear of the property and span the width of the property.

It was considered that the design was acceptable and the impact on the neighbouring properties minimal. The proposal would have been considered permitted development. However, permitted development rights had been removed. The application was refused as the garden was already below 55sqm metres and the further loss of private outdoor amenity space was not considered acceptable.

The Inspector did not consider that, due to the smaller size of the property, a 55sqm area garden is required. The loss of the garden area would not be harmful in amenity terms and the addition of the conservatory would potentially be an amenity asset to the property.

The appeal has been allowed and planning permission granted.

- 3.4 **21 Elliott Close** – Application Ref: 17/0197/FUL. The application sought the provision of a new infill dwelling with off-street parking on the existing plot of no. 21 Elliott Close.

The Inspector considered that the main issues were the effect of the development on the character and appearance of the area and the living conditions of the occupiers of 21 and 23 Elliott Close with particular regard to whether it would be overbearing or result in the loss of light and overshadowing to the garden areas.

The Inspector noted that there is a spacious feel to the area which is a positive and locally distinctive characteristic and the appeal site provides an open aspect between no. 19 and a garage block, which forms an important reprieve in the built form and reinforces the spacious character of the area. The appeal dwelling would narrow the gap between the buildings and consequently undermine the contribution this space makes to the character and appearance of the area. The front of the dwelling would be located very close to the back edge of the pavement, much more so than is typical in the area, and therefore the development would appear discordant with the general layout of the Close resulting in significant harm to its character and appearance. Although there would still be a sizeable gap between no. 19 and the appeal dwelling, this would not adequately mitigate the harm that would arise.

The Inspector also considered the garden areas of nos. 21 and 23 and stated that there would be some overshadowing effect but good ambient light would still reach both

neighbouring gardens would not be unduly overbearing or have a significantly harmful effect on the living conditions of the occupiers and would still allow for a quality of amenity so that nearby residents would feel at ease within their homes and gardens.

In concluding, the Inspector stated that the modest benefits of the development would not outweigh the harm that would arise to the character and appearance of the area and therefore the appeal was dismissed.

- 3.5 **Hideout, Aspen Close** – Application Ref: 17/0207/04. The appeal related to refusal to fell a Scots Pine tree (TPO 442). The tree is rooted at the entrance to this property which is a recently built detached dwelling house. The specimen is long established and was in existence prior to the construction of the new build dwellings in the vicinity.

The application sought to remove the tree due to the perceived health and safety risks posed. The tree is large and located in a relatively elevated and exposed position on top of a hill. Following an incident of a branch dropping during high winds the owners/appellants had concerns around the potential for damage to people and property, especially during windy weather conditions. The original application and subsequent appeal were not supported by a tree survey or report regarding the tree's health and longevity. Significant justification is required to support a proposal to fell a protected tree. The Inspector identified that the specimen in question is large, visible from various public viewpoints in the surrounding area including from the Ludwell Valley Park and so makes a significant positive contribution to local visual amenity.

The Inspector noted that there was no tree survey or inspection by a professional arboriculturalist to indicate the likelihood of further branch failure or the potential for prevention. It was also recognised that there is scope for removal of some deadwood within the crown of the tree which would not require TPO consent and would likely reduce or eliminate the risk of future branch or limb failure. Two residential properties are within range of future branch fall but have large outdoor amenity areas that extend beyond the influence of the tree. Apart from the deadwood in the crown, the Inspector saw nothing to indicate that the tree poses a greater than normal risk. Accordingly, it was concluded that the reasons and evidence put forward for its removal did not outweigh the significant positive contribution to public amenity and the character and appearance of the area and so the appeal was dismissed.

- 3.6 **Aspen House, Aspen Close** – Application Ref: 16/1544/04. The TPO appeal concerned the felling of one Conifer tree located in the rear garden and within close proximity to the rear aspect of Aspen House. The appeal was allowed.

Aspen House is a new build dwelling constructed on land that slopes down towards Woodwater Lane. The existing garden is large and accommodates, as well as its immediate surroundings, a variety of tree species. Due to such tree cover, undulating topography and other land cover features the Conifer tree in question is little visible from the public realm and as such contributes very little to public visual amenity value in the area.

The appellants justified their proposal by claiming the tree causes excessive overshadowing and poses a risk of potential collapse and risk to human health and property. The Inspector concluded that there is no evidence to suggest that the tree poses a greater than normal risk of failure and actually notes that it appears healthy and stable. Further, given the relative size of the tree to the garden it is unlikely to cause excessive overshadowing. The tree does however, in the view of the Inspector, impede outlook from the first floor middle-rear bedroom window and given its very close proximity this was deemed to be detrimental to living conditions and quality of life.

Due to the very limited amenity value of the tree in question its removal (and future replacement with another unit by means of planning condition) is justified even by a relatively insignificant adverse impact upon residential amenity. If the tree was considered able to offer greater public amenity then stronger reasons would need to be put forward in order to justify

its loss.

4. New Appeals:

4.1 Two new appeals have been received since the last report:

17/0121/OUT – Land adjoining the West of England School, Topsham Road

The outline application sought up to 123 houses and associated infrastructure with all matters reserved except for access. The appeal will be dealt with by the Written Representations procedure.

17/0324/FUL – 8 Lyndhurst Road, Exeter

The application sought a roof terrace at first floor level on front/side elevation.

CITY DEVELOPMENT MANAGER

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

Contact for enquiries: Democratic Services (Committees) - Room 2.3. Tel: 01392 265275