

**REPORT TO: PLANNING COMMITTEE**  
**Date of Meeting: 1 September 2014**  
**Report of: Assistant Director City Development**  
**Title: Appeals Report**

**DRAFT**

**Is this a Key Decision?**

No

**Is this an Executive or Council Function?**

No

**1. What is the report about?**

The report provides Members with information on the latest appeal decisions received and a record of new appeals submitted to the Planning Inspectorate.

**2. Recommendation:**

**Members are asked to note the report.**

**3. Summary of decisions received**

The following provides a summary of the six decisions have been received since the last report. Five were dismissed and one was allowed. Copies of the decision letters are available online through searching planning application reference numbers on the City Council website.

**3.1 16 Marlborough Road - Dismissed  
Application 13/3883/03 – new dwelling**

The application, refused by Planning Committee on 30 September 2013, proposed a new dwelling in the large rear garden with vehicular access onto a private lane. The Inspector's report commented on the contemporary design being appropriate to its stand alone location; subservient to adjoining oak trees and would stand upon an area of garden acquired from another property so avoiding harm being caused to the historic garden pattern. He considered that due to its large scale, overt appearance and isolated position on a backland plot disconnected from a formal road frontage, it was poorly integrated in visual and functional terms with the pattern of development. He concluded that the proposal was in conflict with policies in failing to preserve or enhance the character of the CA. Harm caused to the conservation area would be less than substantial so a balancing exercise between harm and public benefits arising from the proposal were considered.

It would be a high quality house and add to the mix and overall quality of housing and would help underpin local shops and businesses. However it was considered that these benefits would be outweighed by the harm that would be caused to the character and appearance of the conservation area and therefore its significance. He also commented on the sole means of access, its constraints and unsuitability. It was noted that the appellant did not have right of access but this was considered to be a legal not planning issue.

**3.2 7 Herschell Road – Dismissed**  
**ENF/11/0026 issued 16 December 2013 re erection of scaffold (not being a temporary structure, erection of raised platform at roof level on an open framework within the recess between no 7 and no 5 Hershell Road)**

At the time of the Inspector's visit, which had been made known to the appellant, the offending structure was partly covered and no access to the house was permitted. The Inspector reviewed photographs and was able to compare them to the structure that existed at the time of his visit. He was unclear from the information before him what the true purpose of the alleged platform was and the appeal on ground (b) failed, that onus of proof had not been discharged to show that the scaffold was not a structure. Ground (c) failed both in respect of the platform and scaffold not being permitted development. Ground (d) of the appeal related to the appellant's assertion that the structure had been in place for over four years. The Inspector referred to a number of documents which disputed or cast doubt on the appellant's claim. The appellant lodged a further ground (f) in a letter to the Inspectorate dated 17 January 2014 that alterations undertaken were adequate to address the harm. Options to reduce the height of scaffolding were not considered acceptable.

There was no time extension added to the period of 28 days in which to undertake removal work. The probability of good weather and sufficient daylight should enable work to be undertaken in agreed working hours so ground (g) also failed. The appeal failed and the enforcement notice was upheld.

**3.3 17 Melbourne Street – Dismissed**  
**Application 14/0416/04 – Work to fell one quince tree**

The main issue was the effect of the removal on the appearance and setting of the Southernhay and Friars Conservation Area and whether the relationship of the tree to the neighbouring features provides justification for the work.

The tree is located at the rear of No. 17 close to the rear access to the terrace off Colleton Mews. It is visible from Colleton Row and adjacent gardens and dwellings. Although a small tree it is of a size in-keeping with its setting, giving an element of greenery to the back gardens, which contributes to the appearance and setting of the CA. This contribution would be lost if the tree were felled.

A larger tree (now removed) is likely to have caused damage to a wall. The Inspector considered that the wall could be rebuilt whilst accommodating the quince and that minor surgery could address growth impacts on the adjacent garden and rear access. The reasons put forward for approval were not considered sufficiently compelling to outweigh the effect of the proposal.

**3.4 41 Park Lane – Dismissed**  
**Application 14/0271/03 – Alteration and extension to provide relocated kitchen and dining room at ground floor level and master bedroom with en-suite at first floor level.**

The first main issue was the impact of the development on the street scene and its relationship in design terms to the existing and adjoining properties. The second issue was the effect of living conditions of adjoining occupiers with particular reference to their outlook and its appearance.

The property is a semi detached dwelling on the south side of Park Lane, a steeply graded road with dwellings of mixed architectural styles, some of which have been

subject of alterations and extensions. It has a steeply pitched ridged roof with small tile hung gable above the front bedroom. The positioning of the property offers limited space at the rear and the boundary with No1 Bindon Road is a conifer hedge. The extension would project forward of the main building line and include a new front gable which the Inspector considered would be incongruous and be a dominant feature in the street scene and have a poor and uncomfortable relationship with the existing pair of dwellings contrary to adopted policies.

The Inspector viewed the site from within the garden of 1 Bindon Road and considered that with the extension coming approx 3.5 metres from the boundary, the proposal would have a very dominant appearance to the detriment of the amenities enjoyed by the occupiers of that property, conflicting with Local Plan Policy DG4.

### **3.5 Land to West of Pilton Lane - Dismissed** **Application 14/0057/03 Development to form 41 retirement living apartments for older persons including communal facilities and associated car parking and landscaping**

This application for 41 retirement homes was considered by Committee on 17 March and delegated authority was granted to determine the application subject to agreement of a S106 agreement to secure affordable housing, if found to be viable, and connection to the proposed district heating network. Subsequent to that, the application was refused on 17 April in the absence of that agreement. The resulted in a Hearing held on 8 July.

The main issue was whether the requirement for a planning obligation in relation to a financial contribution towards affordable housing provision would result in the development being unviable. Policy CP7 of the Core Strategy required that on sites capable of providing 3 or more dwellings, 35% of the total housing provision should be made available as affordable housing. The Inspector's report then went into considerable detail comparing the appraisals provided by both parties in support of their position. The main difference between the parties in terms of viability of the site relates to the overall construction costs, taking account of the basement car park. He favoured the Council's evidence that a contribution of £630,000 was viable.

He reported that in the absence of a planning obligation to secure a financial contribution, the proposal would fail to comply with the Core Strategy, Local Plan, the AH SPD and also contravene requirements of paras 7 and 50 of the NPPF. In the absence of a contribution mechanism the development would fail to represent a sustainable form of development in the context of the definition set out in para 7 of the Framework.

There would be a positive contribution for housing for older people, the financial benefits that the residents could bring to the economy, short and long term employment benefits and receipts from CIL and NHB. The design and scale of development were considered acceptable.

He concluded that the scheme would be sufficiently viable to make a financial contribution towards the provision of affordable housing but with no obligation to secure a financial contribution, the proposal fails to comply with various policies. He commented on the defined need for affordable housing within the City stating that delivery of AH is a key component of delivering inclusive and mixed communities and sustainable development. He did not consider that material considerations in favour of the proposal were sufficient to outweigh the requirements of the Development Plan.

### **3.6 55 Rosebank Crescent – Allowed with conditions**

**Application 13/4847/03 Rear first floor extension over existing lean-to roof and over existing ground floor extension; a rear ground floor single storey extension; loft conversion; bay and porch extension and alteration to the front of the property and rear garage extension.**

The Inspector noted that the Appellant's made considerable efforts between the submission of the application in November 20103 and the eventual refusal in March 2014 to secure acceptable amendments to comply with Council requirements, without success; and a further amendment after refusal to overcome 'errors' was included in the appeal submission. The Inspector was content to deal with these amendments in determining the appeal.

The main issue was the impact of the development on the street scene and in its relationship in design terms to the existing and adjoining properties, having regard to Council's development plan policies and SPD; and whether the mass and scale of the extensions would have any adverse impact on the occupiers of adjoining dwellings.

The Inspector regarded Rosebank Crescent as a residential street of considerable variety in architectural style and ages of property but being predominantly of detached dwellings, noting there was no consistency of design and includes a substantial new property on three levels a short distance from the appeal site.

The Council had raised concerns about a range of different elements but raised no issue regarding the garage extension. Revised drawings show the reduced porch height to be permitted development. The external front door already had a porch and the proposed new porch would have no adverse impact and this also applied to alterations to the existing double storey front bay windows.

The main area of contention appeared to relate to the two storey side addition at the rear of the dwelling whereby a new projecting ridged roof with half hipped end was proposed over the existing footprint of the dwelling. The scheme would increase the mass and height compared with existing footprint. The Householder Extensions SPD encourages extensions to be subservient in their scale and appearance. He viewed adjoining properties on the same side of the Crescent, gaps between properties and from various vantage points and was satisfied that it would not be out of character. In respect of the rear extension for a family room/kitchen extension he considered there would be no loss of light to neighbouring properties, nor would it conflict with the need to protect amenity.

Overall he concluded that the development would not have an adverse impact on either the street scene or in its relationship in design terms to the existing and adjoining properties. Mass and scale would not be such as to have any adverse impact on occupiers of adjoining properties.

### **4. New Appeal**

No new appeals have been submitted.