

REPORT FOR NOTING

DECISION OF:	PLANNING CONTROL COMMITTEE
DATE:	23 April 2019
SUBJECT:	PLANNING APPEALS
REPORT FROM:	HEAD OF DEVELOPMENT MANAGEMENT
CONTACT OFFICER:	DAVID MARNO
TYPE OF DECISION:	COUNCIL
FREEDOM OF INFORMATION/STATUS:	This paper is within the public domain
SUMMARY:	<p>Planning Appeals:</p> <ul style="list-style-type: none"> - Lodged - Determined <p>Enforcement Appeals</p> <ul style="list-style-type: none"> - Lodged - Determined
OPTIONS & RECOMMENDED OPTION	The Committee is recommended to the note the report and appendices
IMPLICATIONS:	
Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework? Yes
Statement by the S151 Officer: Financial Implications and Risk Considerations:	Executive Director of Resources to advise regarding risk management
Statement by Executive Director of Resources:	N/A
Equality/Diversity implications:	No
Considered by Monitoring Officer:	N/A

Wards Affected:	All listed
Scrutiny Interest:	N/A

TRACKING/PROCESS

DIRECTOR:

Chief Executive/ Strategic Leadership Team	Executive Member/Chair	Ward Members	Partners
Scrutiny Committee	Committee	Council	

1.0 BACKGROUND

This is a monthly report to the Committee of the Planning Appeals lodged against decisions of the authority and against Enforcement Notices served and those that have been subsequently determined by the Planning Inspectorate.

Attached to the report are the Inspectors Decisions and a verbal report will be presented to the Committee on the implications of the decisions on the Appeals that were upheld.

2.0 CONCLUSION

That the item be noted.

List of Background Papers:-

Contact Details:-

David Marno, Head of Development Management
Planning Services, Department for Resources and Regulation,
3 Knowsley Place ,Bury BL9 0EJ

Tel: 0161 253 5291

Email: d.marno@bury.gov.uk

**Planning Appeals Lodged
between 18/03/2019 and 14/04/2019**



Application No.: 63517/FUL

Appeal lodged: 02/04/2019

Decision level: DEL

Appeal Type: Written Representations

Recommended Decision: Refuse

Applicant: Mr S Morris

Location Nutt Lane Stables, Land to the east of Nutt Lane, Simister, Prestwich,
Manchester, M25 2SJ

Proposal Change of use of stable block to 1 no. dwelling

Total Number of Appeals Lodged: 1

**Planning Appeals Decided
between 18/03/2019 and 14/04/2019**



Application No.: 63060/FUL

Decision level: DEL

Recommended Decision: Refuse

Applicant: Mr Ivan Hajdukewycz

Location: 323 Turton Road, Tottington, Bury, BL8 3QG

Proposal: Alterations to front garden area to form parking area and erection of retaining wall

Appeal Decision: Allowed

Date: 02/04/2019

Appeal type: Written Representations



Appeal Decision

Site visit made 17 January 2019

by Julie Dale Clark BA (Hons) DipTP MCD DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd April 2019

Appeal Ref: APP/T4210/D/18/3216950

323 Turton Road, Tottington BL8 3QG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Ivan Hajdukewycz against the decision of Bury Metropolitan Borough Council.
 - The application Ref 63060, dated 15 July 2018, was refused by notice dated 7 September 2018.
 - The development proposed is alterations to front garden area.
-

Decision

1. The appeal is allowed and planning permission is granted for alterations to front garden area at 323 Turton Road in accordance with the terms of the application, Ref 63060, dated 15 July 2018, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The materials to be used in the external surfaces of the development hereby permitted shall match those used in the existing building.
 - 3) The development hereby permitted shall be carried out in accordance with the following approved plans:-
 - *Location Plan;*
 - *Existing Site Plan;*
 - *Existing Sections A-A and B-B;*
 - *Existing Sections C-C and D-D;*
 - *Proposed Site Plan;*
 - *Proposed Road Elevation;*
 - *Proposed Sections A-A and B-B; and*

Procedural Matters

2. The proposed works indicate that alterations to the access are proposed but this does not form part of this application so I have not considered them. The proposal also includes a fence on top of the proposed retaining wall but, given that this is part of the proposal as a whole as shown on the submitted plans, it

is not included in the description of development and therefore I have not considered it as a separate matter.

Main Issues

3. I consider that the main issues are: -

- whether the proposal constitutes inappropriate development in the Green Belt and its effect on openness; and
- whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances necessary to justify the development.

Reasons

Green Belt

4. The site is within the Green Belt and the National Planning Policy Framework¹ explains that inappropriate development is, by definition, harmful to the Green Belt. Engineering operations are not inappropriate in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within it. The Framework further advises that the essential characteristics of Green Belts are their openness and their permanence. The Framework sets out the five purposes that Green Belts serve².
5. The Council's SPD³ refers to UDP⁴ policy OL1/5, in Appendix 1, which indicates that within the Green Belt other development, not including buildings, will be inappropriate unless it maintains openness and does not conflict with the purposes of including land in the Green Belt. Examples include car parks or other areas of hardstandings and garden extensions.
6. The appeal site is a detached house located in an elevated position off Turton Road (B6213). It has a tarmac parking area in front of the house with a grassed area sloping down to Turton Road. A mature hedge runs along the boundary of the site and the road.
7. The proposal would excavate part of the sloping land so that it ran level with the parking area and enlarge this area to provide improved turning space. A new retaining wall would be constructed in stone with stone copings and a low aluminium fence.
8. No 323 is a substantial sized house set within a generous plot. Access from Turton Road is steep and fairly narrow and the extra space would improve vehicle manoeuvring. Whilst the house is in an elevated position, as would the proposed additional parking area, I do not consider that it would appear unduly prominent or out of keeping in this topography. I do not therefore consider that it would unduly infringe on the openness of the Green Belt.

¹ Ministry of Housing, Communities & Local Government National Planning Policy Framework, July 2018 (the Framework).

² Paragraph 134.

³ Development Control Policy Guidance Note 8. New Buildings and Associated Development in the Green Belt, Adopted 10 January 2007.

⁴ Bury Unitary Development Plan Adopted Plan 1997. Written Statement Adopted by Bury Metropolitan Borough Council 29 August 1997.

Other Considerations and Conditions

9. As I have found that the proposal is not inappropriate development in the Green Belt there is no need for me to assess other considerations that may amount to very special circumstances. The Council suggest conditions in relation to matching materials and that the development is carried out in accordance with the approved plans. These are not unreasonable, are necessary to ensure a satisfactory development and for the avoidance of doubt.

Conclusion

10. I have considered all other matters raised but none alter my conclusion. I conclude that the proposal would not constitute inappropriate development nor harm the openness of the Green Belt.
11. The proposal would not conflict with the Framework and therefore the appeal succeeds.

J D Clark

INSPECTOR

The Ombudsman's final decision

Summary: Mr X and Mr Y complain about the way the Council has considered their planning application. The Ombudsman will not investigate this complaint because they have appealed to a Planning Inspector.

The complaint

1. Mr X and Mr Y complain about the way the Council has considered their planning application.

The Ombudsman's role and powers

2. We cannot investigate a complaint if someone has appealed to a government minister. The Planning Inspector acts on behalf of a government minister. (*Local Government Act 1974, section 26(6)(b), as amended*)
 1. The courts have said that where we cannot investigate a complaint about the main or underlying issue, we cannot normally investigate related issues either. (*R (on the application of M) v Commissioner for Local Administration in England [2006] EWHC 2847 (Admin)*)
 2. The Planning Inspector acts on behalf of the responsible Government minister. The Planning Inspector considers appeals about:
 - delay – usually over eight weeks – by an authority in deciding an application for planning permission
 - a decision to refuse planning permission
 - conditions placed on planning permission
 - a planning enforcement notice.

How I considered this complaint

3. I have considered the complainant's comments and the Council's comments and Mr X has had an opportunity to comment on the draft decision.

What I found

4. The complainants made a planning application to extend or make alterations to a building in February 2018. The planning application was refused and they appealed to a Planning Inspector.

-
5. The Local Government Ombudsman cannot investigate a complaint which has been appealed to a Planning Inspector. The complainants argue that Council gave inaccurate information to the Planning Inspector and the Planning Committee and this is a separate complaint to the planning application decision.
 6. I am not persuaded that this complaint can be separated from the planning application itself. I consider therefore that this matter is out of jurisdiction.

Final decision

7. I will not investigate this complaint as Mr X and Mr Y appealed to a Planning Inspector.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Mr X has complained about how the Council dealt with a planning application for a single storey extension. There is no evidence of fault by the Council.

The complaint

1. Mr X has complained about how the Council dealt with his neighbour's planning application. He says the Council did not properly consider the application and the case officer's report included incorrect and misleading information which was relied upon to justify granting planning permission.

The Ombudsman's role and powers

2. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

4. I have considered all the information from Mr X and the Council including the information available to the public on the Council's website.
5. A copy of this decision was sent in draft to Mr X and the Council. I have considered the comments received in response.

What happened

6. In 2018, Mr X's neighbour applied to the Council for planning permission to build a single storey extension at the rear of their property. Mr X objected to the proposal. He raised several concerns about the impact the extension would have on the surrounding area and said it would significantly reduce light to his home. Mr X also argued the proposed extension was too close to the boundary with his property and said the foundations would encroach on his land.
7. The Council considered the application and granted planning permission subject to conditions. However, Mr X's neighbour did not build the extension and instead made a second planning application. The second application was largely the

same as the first, but the proposed extension was further away from the boundary with Mr X's home. Mr X again objected and raised concerns about the impact on his property. However, after considering the application the Council granted planning permission.

What I found

8. Mr X has complained about how the Council dealt with the first planning application his neighbour made to extend their property. He says the case officer's report wrongly referred to his home as being to the south of the extension, but it is clear from the plans his property is located to the south-west. Mr X argues that his home will lose light and questions how the case officer found otherwise. Mr X has also complained the case officer failed to properly consider the information his neighbour provided about the extension's foundations and says he has incurred legal costs as a result.
9. The Council's Supplementary Planning Document (SPD) details the issues the Council should consider when deciding planning applications for single storey rear extensions. The SPD says that where the proposed extension is on or immediately adjacent to the boundary of an adjoining property, it should not normally extend more than three metres beyond the rear of that property. If the extension does exceed three meters, the officer should carry out a 45-degree light test to ensure there will not be an unacceptable loss of day and sunlight. If a proposed extension encroaches on the 45-degree line it will not normally be permitted unless it is shown the amenity of neighbours is not seriously and detrimentally affected. The policy says to assess this the case officer should consider the 25-degree light test and where the extension lies in relation to the sun.
10. While the SPD is a material planning consideration the Council does not always need to strictly follow it and failing to comply with all aspects of planning policy is not necessarily fault. In this case, the officer said that while the 45-degree and 25-degree lines are encroached, the extension was still acceptable. She said the property is located to the south of the extension and so the sun path would be unaffected. The case officer also said the impact on light would be the same should the applicant build a smaller extension under permitted development rights.
11. Mr X disputes the case officer's comments about the sun path. He says the Council has wrongly referred to the location of his home in relation to the extension and the impact on his home will be greater than the case officer's report suggests. Mr X argues the Council based its decision to grant planning permission on this incorrect information. The Council accepts the proposed extension was slightly to the south-east of Mr X's home. However, it says this was marginal and did not affect its decision to grant planning permission or significantly impact its assessment of the sunlight. The officer also visited the site before granting planning permission so was aware of the location and relationship between the properties before deciding the proposal was acceptable in planning terms.
12. I understand Mr X may disagree, but even if it could be shown the case officer did wrongly consider the position of his home, I cannot say this caused any significant injustice as Mr X's neighbour did not build this extension and instead made a second planning application. The report for the second application referred to Mr

X's home as being located to the south-west of the extension and concluded that the impact on his property would be acceptable.

13. I have also considered the comments Mr X has made about the proposed extension encroaching on his property. When Mr X objected to the proposed extension he raised concerns that part of the foundations would be on his land. Mr X says the Council failed to properly look into these concerns before granting planning permission and he incurred legal costs as a result.
14. I am satisfied the Council did consider Mr X's objections to the proposed extension and asked the applicant for information to show the foundations were not on Mr X's land. I understand Mr X says the Council had a responsibility to resolve this matter, but the case officer did look into Mr X's concerns and it is not for the Council to get involved with land ownership issues. I understand Mr X does not agree, but this is not a material planning consideration and the Council needs to decide if a proposal is acceptable in planning terms.

Final decision

15. There is no fault with how the Council dealt with Mr X's neighbour's application to extend their property.

Investigator's decision on behalf of the Ombudsman