

REPORT FOR NOTING

DECISION OF:	PLANNING CONTROL COMMITTEE
DATE:	16 February 2021
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:-

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**Planning Appeals Lodged
between 07/12/2020 and 07/02/2021**



Application No.: 65867/FUL

Decision level: DEL

Recommended Decision: Refuse

Applicant: Mr Asghar

Location 159 Radcliffe Road, Bury, BL9 9LN

Appeal lodged: 11/01/2021

Appeal Type: Written Representations

Proposal Two storey side extension; Two storey rear extension; Front porch extension

Application No.: 66085/FUL

Decision level: DEL

Recommended Decision: Refuse

Applicant: Mr & Mrs Packun

Location Higher Ash, 12 Hawkshaw Lane, Tottington, Bury, BL8 4LD

Appeal lodged: 25/01/2021

Appeal Type:

Proposal Change of use of barn to form dwelling including single storey, two storey and roof extensions; External alterations include hardstanding area, new pond and landscaping

Total Number of Appeals Lodged: 2

The Ombudsman's final decision

Summary: Ms B complains that the Council has issued a neighbouring business with a commercial bin and has failed to take action to stop the resulting nuisance and antisocial behaviour. We find no fault on the Council's part.

The complaint

1. Ms B complains that the Council has issued a neighbouring business with a commercial bin and has failed to take action to stop the resulting nuisance and antisocial behaviour.

What I have investigated

2. I have investigated the Council's actions since Ms B's neighbours were issued with a commercial bin in June 2019.

The Ombudsman's role and powers

3. 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*)
4. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
5. 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

6. I have considered all the information provided by Ms B, made enquiries of the Council and considered its comments and the documents it provided.
7. Ms B and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

What I found

Key facts

8. In 2017 the Council granted Ms B's neighbours, Mr and Mrs X, planning permission for a change of use of a dwelling attached to their sandwich shop to use as another shop unit. A condition was attached to the grant of planning permission requiring refuse storage arrangements within the rear yard to be made available for use and to remain available at all times.
9. There was a dispute between Ms B and Mr and Mrs X about the boundary between their properties because of the planning application. Ms B began experiencing antisocial behaviour (ASB) including men banging on her windows and doors in the early hours of the morning and urinating on her property.
10. In January 2019 Ms B contacted the Council's planning department for help with this. The planning team explained these were not planning issues and forwarded her email to the ASB team who contacted her asking her to report any further problems.
11. Ms B reported further incidents and provided CCTV footage. An ASB officer interviewed Ms B in March 2019 at her home and advised her to keep a diary of incidents.
12. Ms B complained to the Council that Mr and Mrs X were in breach of the planning condition regarding bin storage. Planning enforcement officers visited and took photographs confirming that works for the bin storage provision had been completed and the bins were located in the rear yard. The service manager wrote to Ms B confirming the condition was being complied with.
13. In June 2019 the ASB team wrote to Ms B stating they were closing the case because they had heard nothing further from her but would re-open it if she reported any further incidents.
14. The Council's waste management team issued Mr and Mrs X a commercial bin following concerns raised by environmental health officers about the number of bins at the premises. They placed the bin on the pavement next to Ms B's property. Ms B complained to the planning department that Mr and Mrs X were in breach of the planning condition by not keeping the bin on their own land. She said it was unsightly, smelly and unsafe because numerous men were using the 'privacy' of the bin to urinate on her property.
15. The planning department explained the planning condition had been complied with because the bin storage arrangements were in place. It explained it could not require Mr and Mrs X to store the bins in the specified area. It said bins on the public highway were an issue for the highways department and it had forwarded Ms B's email to them.
16. In July 2019 Ms B complained about the Council's handling of the matter. The Head of Engineering responded at stage 1 of the Council's complaints procedure setting out the Council's position with regard to planning, waste management and highways.
17. The officer explained that, from a planning perspective, officers had investigated and were satisfied there was no breach of planning permission because the condition required provision for bins to be made, which it had been. So, the condition had been complied with and the planning department could not insist on the bins being used.

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18. In relation to waste management, the officer explained that the commercial waste officer was satisfied the commercial bin was not causing an obstruction and that all the waste was fully contained in it with the lid on.
 19. The officer explained that the role of the highways authority was confined to deciding whether it was expedient to use enforcement powers against bins placed on the highway. In doing so it had to consider three factors: expediency, safety and public crime and disorder. The site had been inspected by an officer from engineering services who was satisfied the bin could not be considered an obstruction due to the width of the footway. However the Council accepted that the position of the bin close to Ms B's property was facilitating misuse, crime and disorder so it had instructed Mr and Mrs X to ensure it was positioned away from Ms B's property.
 20. In October 2019 Ms B contacted her local councillor. The Council treated this as a stage 2 complaint and responded repeating the information set out in the stage 1 response. It said the highways department would write to Mr and Mrs X requiring them to maintain consistent positioning of the bin away from Ms B's property. It said that, as there had been no recent reports of harassment, the ASB team had closed the complaint but was happy to work with the highways department and the police to try to assist. The Council asked Ms B to confirm whether the bin was still being located outside her property so officers could decide from a highways perspective whether there was reason to insist it was not located on the highway.
 21. Ms B responded saying she remained unhappy with the action taken by the Council. She said that the bins were still being kept next to her property and not in the approved position away from it.
 22. On 28 November 2019 officers visited the site and spoke to the manager of the sandwich shop who agreed to store the bins in the approved position.
 23. On 2 December 2019 Ms B contacted the Council stating that the bins had been returned to their position next to her property resulting in further ASB outside her home.
 24. On 3 December 2019 an ASB officer responded stating that the team had been in discussions with other Council departments about what action to take. He said, "I have reviewed the footage sent through and I sympathise with you completely as this is not something that anyone should have to endure outside their home". But he explained that taking action was not simple. He said the first course of action was to relocate the bin further away from Ms B's property which had been done. But, to tackle the issue under ASB legislation, the team would need to prove this was a persistent nuisance by the same individuals. Although the CCTV footage provided evidence of nuisance, the individuals involved were different each time and appeared to be passers-by rather than persistent offenders. So, it was difficult for the team to take any action. The officer suggested Ms B continue to provide evidence and, if there were any persistent offenders, the team may be able to assist.
 25. Ms B responded stating that the problem was caused by the commercial bin which was still next to her property. She believed officers asked Mr and Mrs X to move the bin on 28 November 2019 but, two days later, it was back next to her home and she was still suffering ASB as a result. The ASB team responded explaining they had no jurisdiction over the bins but said that the relevant department would respond shortly.

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26. On 20 December 2019 Ms B sent an email saying she believed an officer may have visited the shop that morning to get the bin moved to the approved location but within an hour it was moved back outside her property.
27. A highways officer visited the site on 6 January 2020. He spoke to Mr and Mrs X and moved the bins to the approved location. He visited again on 17 January and found the bins in the correct location. He visited again on 22 January. Both shop owners said they had had to move the bins back to the agreed location daily as they kept being moved. They said they had also spoken to the waste management crew to confirm they were aware the bins must be placed in the agreed position.
28. The commercial waste officer confirmed to other officers that the waste management crew had been instructed where to put the bin when emptied and always made sure it was replaced neatly after collection. He had no concerns because he was satisfied the bin was not causing an obstruction to the footway and all the waste was fully contained in it and the lid closed.
29. The highways officer visited the site again on 26 February and found the bins in the correct location.

Analysis

30. I have considered the Council's handling of this matter in relation to planning, ASB, waste management and highways.

Planning

31. Ms B says the use of the commercial bin does not comply with the planning permission granted by the Council.
32. Planning enforcement officers visited the site and were satisfied the planning condition regarding storage of refuse had been complied with. The condition required facilities to be available within the rear yard of the premises for storage of bins. Officers were satisfied that works had been completed and that this area was available. So, there was no breach of planning permission.
33. There are no grounds to criticise this decision. The local planning authority cannot force the owners of the property to use the storage area but can only ensure that the provision is made.

Highways

34. There is no statutory requirement to keep refuse bins off the highway. Highways officers can only take action if the bin "wilfully obstructs the free passage along the highway" under the Highways Act 1980.
35. The highways department has explained that usual footway widths are in the region of 1.8 metres to 2 metres. In this location the footway is around 4 metres wide. So, officers were satisfied the commercial bin can be placed on the footway without causing an obstruction.
36. Highways officers spoke to Mr and Mrs X and asked them to keep the bin in a position away from Ms B's property. Officers have visited the site on several occasions and have found the bin has been correctly positioned.
37. As highways officers are satisfied there is no obstruction to the footway and that the bin is not causing crime and disorder if located in the approved position, there are no grounds to criticise their decision not to take further action.

Waste management

38. I find no grounds to criticise the waste management team for issuing a commercial bin to Mr and Mrs X because this was recommended by environmental health officers.
39. Waste management officers visited the site and were satisfied the bin was in the approved position and that all the rubbish was contained in it and the lid shut. They could not take action regarding the bin overflowing unless they witnessed this happening on a regular basis.

ASB

40. The ASB team reviewed the CCTV footage and diary sheets Ms B submitted. They properly explained that Mr and Mrs X could not be held responsible for the actions of members of the public. Officers also explained they would not be able to take action unless there was sufficient evidence that the behaviour was being repeated by the same individuals. In the absence of such evidence, no action could be taken because the perpetrators were unknown and did not appear to be repeat offenders. Officers have confirmed they will re-open the case if Ms B is able to provide further evidence.

Conclusion

41. I am satisfied the Council has properly investigated Ms B's concerns that the commercial bin was causing nuisance and antisocial behaviour. The planning, highways, waste management and ASB teams have worked together to try to resolve the situation. I do not consider the Council could do any more without further evidence as explained by the ASB team.
42. Ms B says the Council should remove the commercial bin and require Mr and Mrs X to use smaller bins which are easily movable from their storage yard or insist they make alterations to their property so the commercial bin can be stored in the yard.
43. There is no requirement for the Council to do this. It is satisfied there has been no breach of planning permission so there are no grounds to take enforcement action. It is also satisfied the bin is not creating an obstruction to the highway so there are no grounds to require it to be removed.

Final decision

44. I have completed my investigation on the basis I am satisfied with the Council's actions.

Parts of the complaint that I did not investigate

45. I have not investigated the grant of planning permission because this took place too long ago. The Ombudsman will normally only investigate matters which took place within 12 months from the date the person affected complained to us.

Investigator's decision on behalf of the Ombudsman