

Wolverhampton City Council

OPEN INFORMATION ITEM

Committee / Panel	<u>PLANNING COMMITTEE</u>	Date 4 th December 2012
Originating Service Group(s)	EDUCATION AND ENTERPRISE	
Contact Officer(s)/	STEPHEN ALEXANDER (Head of Planning)	
Telephone Number(s)	(01902) 555610	
Title/Subject Matter	PLANNING APPEALS	

1.0 Purpose of Report

- 1.1 To provide the Committee with an analysis of planning appeals in respect of decisions of the Council to either refuse planning or advertisement consent or commence enforcement proceedings.

2.0 Planning Appeals Analysis

- 2.1 The Appendix to this report sets out the details of new planning appeals, ongoing appeals and those which have been determined by the Planning Inspectorate in respect of the decisions of the Council to either refuse planning or advertisement consent or commence enforcement proceedings.
- 2.2 In relation to the most recent appeal decisions of the Planning Inspectorate i.e. those received since last meeting of the Committee, a copy of the Planning Inspector's decision letter, which fully explains the reasoning behind the decision, is attached to this report. If necessary, Officers will comment further on particular appeals and appeal decisions at the meeting of the Committee.

3.0 Financial Implications

- 3.1 Generally, in respect of planning appeals, this report has no specific financial implications for the Council. However, in certain instances, some appeals may involve the Council in special expenditure; this could relate to expenditure involving the appointment of consultants or Counsel to represent or appear on behalf of the Council at Public Inquiries or, exceptionally, if costs are awarded against the Council arising from an allowed planning/enforcement appeal. Such costs will be drawn to the attention of the Committee at the appropriate time.

**4.0 Equal Opportunities/
Environmental Implications**

- 4.1 None.

NEW APPEALS

Appeal Site / Ward / Appellant	Application No / Proposal
18B Milcote Drive, Wolverhampton Bilston North Mr And Mrs Washbrook	12/00916/FUL Two storey rear extension

ONGOING APPEALS

	<u>Appeal Site / Ward</u>	<u>Appellant</u>
1.	53 Mount Road Tettenhall Wood Wolverhampton Tettenhall Wightwick	Mr P Stafford
2.	Lidl Food Store 27 Blackhalve Lane Wolverhampton Fallings Park	Donna Commock
3.	Land At New Street Portobello Wolverhampton East Park	Vodafone/O2
4.	28 & 29 Stubbs Road Wolverhampton Graiseley	Mr & Mrs DJ & M Bradley
5.	Lidl Finchfield Hill Wolverhampton Tettenhall Wightwick	Miss Donna Commock
6.	Land At Wergs Garage 81 Wergs Road Wolverhampton Tettenhall Regis	Telefonica UK Ltd
7.	84 Woodthorne Road South Wolverhampton Tettenhall Regis	Mr B Singh

APPEALS DETERMINED SINCE LAST MEETING

Appeal Site / Ward / Appellant	Application No / Proposal	Decision and Date of Decision
87 Oxley Moor Road Wolverhampton Oxley R Gambone	Appeal against	Appeal Dismissed 24.10.2012
7 Park Avenue Whitmore Reans Wolverhampton Park Mr H S Raikhy	Appeal against	Appeal Allowed 24.10.2012
268 Penn Road Wolverhampton Penn Mr Mohinder Heran	Appeal against	Appeal Dismissed 07.11.2012



Appeal Decision

by Chris Hoult BA(Hons) BPhil MRTPI MIQ

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 October 2012

Appeal Ref: APP/D4635/C/12/2175409

Land comprising Rear Garden of 87 and 89 Oxley Moor Road, Oxley, Wolverhampton, WV10 6TY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr R Gambone against an enforcement notice issued by Wolverhampton City Council.
- The Council's reference is 11/196/ENCOMP.
- The notice was issued on 27 March 2012.
- The breach of planning control as alleged in the notice is the erection of a single storey detached dwelling house on the Land.
- The requirements of the notice are to: (1) Demolish the building and remove all building material and rubble generated from the demolition. (2) Remove the close boarded fence that subdivides the rear garden of 87 Oxley Moor Road.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended ("the 1990 Act"). Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the 1990 Act does not fall to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Background and preliminary matters

1. The appeal site consists of part of the rear gardens to nos. 87 and 89 which have been separately enclosed to form a discrete corner plot, with a separate pedestrian and vehicle access to Beech Road, a side road, and a frontage to Beech Close, a cul-de-sac off it. The Council explains that the appellant purchased no. 87 in 2009 and part of the adjoining garden to no. 89 in 2010. Two planning applications for residential development of the plot thus formed were refused in June and August 2010, the second being dismissed on appeal, prior to the erection of the building, which was brought to its attention in 2011.
2. The appellant claims that what has been erected is a games room and workshop, subject of a pre-application enquiry and a Building Regulations application. He refers to discussions with Council officers as to its dimensions. He says that it is permitted development under the provisions of Class E of Part 1 of Schedule 2 to the GPDO¹. The appeal under ground (c) initially appeared to introduce planning merits arguments, normally dealt with in a ground (a) appeal, though the required fee had not been paid. In revised grounds, he argues under ground (b) that the building is incomplete but is not used as a

¹ The Town and Country Planning (General Permitted Development) Order 1995 as amended.

dwelling and, under ground (c), that it is ancillary to the main dwelling and has been erected so as to comply with limitations on permitted development.

3. The two grounds largely overlap. The appellant's claim is that permitted development rights under Class E apply. It is necessary therefore to determine whether the building meets the relevant requirements and limitations of Class E. I deal with the appeal on grounds (b) and (c) together, on that basis.

Ground (b)/ground (c) appeals

4. Class E permits "the provision within the curtilage of a dwellinghouse of any building...required for a purpose incidental to the enjoyment of the dwellinghouse". The Courts have established that something incidental to the enjoyment of a dwellinghouse cannot itself provide for a primary dwellinghouse purpose i.e. a bedroom or kitchen. Which of those it should be is for determination on the basis of fact and degree.² Class E deals with rights for the erection of a building, not its use, so long as it is required for a purpose incidental to the enjoyment of a dwellinghouse. The words "required for a purpose" limit permitted development to that which has been designed and built with such a purpose in mind. That should not include anything which is designed from the start as primary residential accommodation.
5. I therefore approach the evidence relating to the design of the building with this background in mind. No detailed plans are submitted by the appellant of it in its completed state so I base my assessment on it as seen. Although the plot straddles the curtilages of both nos. 87 and 89, it is wholly within that of no. 87. It has a door to the front which leads into a small hall to one side of which is a large room with kitchen facilities in one corner. French windows lead from it to a rear patio. Ahead is a shower room and toilet. To the other side is an empty room. At the time of my visit, there was a treadmill and pool table in the large room. The kitchen was not complete and contained none of the usual kitchen appliances but there was a sink and drainer and storage space.
6. The term "games room" can cover a range of purposes which can encompass everyday living space. I would not typically expect to see kitchen facilities in a room designed with a more specialised purpose in mind. The presence of windows in the large room admitting natural light and giving access to a patio indicate that the primary intention is to provide living space, even though it presently happens to have fitness and games equipment in it. The separate shower and toilet could serve a fitness room but are equally consistent with that intention. There was no evidence in the form of fittings that either of the main rooms is purposely designed as a fitness room or workshop. The empty room has the appearance of a bedroom, with a large window giving an outlook to the front, but without associated bedroom furniture.
7. A hardstanding to the side of the building provides a parking space for a car, with a gated vehicle access to the street. The appellant says that it is used for parking his caravan, even though the evidence is that he does not live at no. 87 but lets it to tenants. However, from what I saw of the caravan, it is plain that it is not in use nor is it likely to have been used as a caravan for some time, being in a very poor state of repair. That casts doubt on the reliability of the appellant's evidence in relation to this claim.

² See *Rambridge v SSE and East Hertfordshire DC* [1996] EWHC Admin 262; *Pêche d'Or Investments v SSE* [1996] JPL 311

8. In a legal ground of appeal, the appellant needs to demonstrate the purpose for which the building was erected. The simple placing of games and fitness equipment in it is plainly insufficient to discharge the required burden of proof. It is necessary to look beyond this at the circumstances of its design and construction, in so far as these give an indication of its purpose. There is no evidence of any substance relating to this. Even though it has not been completed, its design and layout firmly indicate that it is a detached dwelling, which is located in a separately enclosed plot to nos. 87 and 89, with its own parking space. Evidence of past attempts to obtain planning permission for such a dwelling, of similar form and design, adds weight in support of this view.
9. In the light of this, I conclude on the balance of probabilities that the building is not permitted development under the provisions of Class E. It does not amount to an enlargement of the main dwelling at no. 87 such that rights under Class A of Part 1 might be engaged. Accordingly, I conclude that it amounts to the unauthorised erection of a detached dwelling, as the Council alleges. For these reasons, the appeals under grounds (b) and (c) must fail.

Ground (f) appeal

10. The appellant draws attention to rights under Class E to erect an outbuilding in the garden but I have found that the building is an unauthorised dwelling. I noted in the course of my visit that the limitations of Class E are marginally exceeded as regards the distance to the boundary with the garden to no. 89. However, even if I were to regard that as *de minimis*, it does not alter the fact that it is not, as a whole, covered by the provisions of Class E. The appellant refers to *Somak Travel*³ but that case deals with development which supports an unauthorised use. It is plain that the purpose of the notice is to remedy the breach by returning the land to its condition before it took place.
11. The Council has twice objected to a building on the plot in refusing planning permission. This is not therefore a case where any injury to amenity might be remedied by retaining the building. There is in any event no appeal on ground (a). It is open to the appellant to pursue the building's conversion along with revisions to plot boundaries, in line with the suggestions made in paragraph 3.11 of his grounds of appeal, with a view to seeking planning permission. Lawfulness cannot be retrospectively conferred on it through a conversion, unless permission is obtained. In the absence of an application, a requirement to demolish the building is not excessive, given the purpose of the notice, and lesser steps would not suffice. The ground (f) appeal therefore fails.

Conclusions

12. For the reasons given above, I conclude that the appeal fails and that the notice should be upheld.

Decision

13. The appeal is dismissed and the enforcement notice is upheld.

C M Hoult

INSPECTOR

³ *Somak Travel v SSE and LB of Brent* [1987] JPL 630



Appeal Decision

Site visit made on 16 October 2012

by Chris Hoult BA(Hons) BPhil MRTPI MIQ

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 October 2012

Appeal Ref: APP/D4635/C/12/2178336

7 Park Avenue, Whitmore Reans, Wolverhampton, WV1 4AH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Harbhajan Singh Raikhy against an enforcement notice issued by Wolverhampton City Council.
 - The Council's reference is ENF/12/0075.
 - The notice was issued on 25 May 2012.
 - The breach of planning control as alleged in the notice is replacement windows (in contravention of the Article 4 Direction Park Conservation Area).
 - The requirements of the notice are to: (1) Remove the unauthorised UPVC windows. (2) Secure the replacement of timber windows and leaded lights to match the original profiles and design.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out, namely, replacement windows on land at 7 Park Avenue, Whitmore Reans, Wolverhampton, WV1 4AH, referred to in the notice.

Ground (a) appeal

Main issue

2. The main issue is the effect of the development on the character and appearance of the Park Conservation Area.

Reasons

3. The Park Conservation Area (CA) is located just to the north west of the city centre. It is focused on the fine oval-shaped late-Victorian municipal West Park (a Grade II Registered Park) and includes its immediate surroundings and streets radiating from it. These include Park Avenue, which is a residential street which provides a minor link from the main road network to the north-east to the park's perimeter road. I was not furnished with a CA Appraisal by the Council. From my own observations, the most recognisable determinants of its character and appearance are its robust, leafy suburban townscape and vistas across, and glimpses of, the park from the surrounding streets and houses. The presence of substantial Victorian villas with original detailing close

- to the park, and of mature trees in the park and surrounding streets, serves to make a positive contribution and reinforce the character of the CA.
4. Park Avenue has a number of such houses, including some of distinctive, individual design and others which have been sensitively modernised. It also includes houses which date from the early and mid-20thC, together with modern infill residential development which tends to detract from its overall character. The appeal property is a substantial semi-detached house whose design reflects its inter-war origins, forming a pair with no. 8, both of which are faced in white render with a prominent double bay and projecting gable to the front, including tile hanging to the bay and gable. Both appear to have had installed uPVC windows to the front elevation, at ground and first floor levels, stained brown and modelled to give an appearance of timber. Modern replacement stained glass has been used for the upper casements.
 5. In a sensitive area such as this, a designated heritage asset, replacement windows should, in principle, seek as far as possible to replicate the form, design and materials of the original. For some houses on the street, failure to do this would significantly detract from their appearance. The Council issued its Article 4 Direction following consultation and it is directed at such insensitive alterations to properties. However, this is not an area whose character derives from any strong pattern or consistency in terms of built form, design or materials. The extent to which original materials should be insisted upon when properties are maintained or modernised needs to relate to the significance of the effect on their appearance and that of the CA as a whole.
 6. The Council says that the appellant could have sought more sympathetic solutions to the poor state of repair of the previous timber window frames but it not clear from its evidence whether it is advocating that these should have been retained. The Direction does not preclude uPVC windows from being allowed. The test is their effect on the CA. In the case of the appeal property and its neighbour, some attempt has been made to provide sympathetic replacements and associated stained glass casements. The use of brown-stained materials for window frames is not of itself objectionable. They do not readily catch the eye on account of their thickness, in spite of the "lumpy" appearance of some casement openings. The stained glass, although modern, is sympathetic to the design of the property, which broadly blends with the original stained glass where retained, in the doorway and on the side elevation.
 7. Given its design, the appeal property makes a neutral contribution to the character and appearance of the CA. The windows as replaced are a major component of its most prominent feature but, in the light of the foregoing, they do not detract from its appearance to an extent that causes material harm. There are other examples of uPVC windows but they are for the most part on more modern properties where they, similarly, do not necessarily look out of keeping with the design of the building. The Council will, with the Direction on place, retain control over alterations to more sensitive properties. It says that, prior to the replacement windows, the appeal property and its neighbour had retained many original details, including timber windows and leaded lights, but I have no evidence of that.
 8. Accordingly, I consider that any harm caused by the replacement windows is not so material as to warrant the appellant incurring the possibly considerable expense of removing them and fitting further replacements in timber to the original profile and design, as the notice requires. I question what upholding

the notice would achieve in terms of the effect of such replacement windows on the CA taken as a whole, given my conclusions as to the contribution to its character made by the appeal property. Paragraph 134 of the National Planning Policy Framework requires that, where a proposal results in less than substantial harm to the significance of a designated heritage asset, as in this case, that should be weighed against its public benefits. The replacement of unsightly rotting timber frames and the ongoing maintenance of housing stock are two such benefits, which serve to outweigh any harm arising.

9. In the light of this, I conclude that no material harm arises to the character or appearance of the CA from the development and that, to that extent, both would be preserved. It complies with the various policies of the Black Country Core Strategy and Wolverhampton Unitary Development Plan cited by the Council in relation to design matters and effects on conservation areas. Neither party refers me to conditions which I might attach were I minded to allow the appeal. I consider that none are necessary in this case.

Conclusions

10. For the reasons given above I conclude that the appeal should succeed on ground (a). Planning permission will be granted and the notice quashed.

C M Hoult

INSPECTOR



Appeal Decision

Site visit made on 30 October 2012

by **Andrew Jeyes** BSc DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 November 2012

Appeal Ref: APP/D4635/C/12/2178595
268 Penn Road, Wolverhampton WV4 4AD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr M Heran against an enforcement notice issued by Wolverhampton City Council.
 - The Council's reference is: 11/00156/ENCOMP.
 - The notice was issued on: 17 May 2012.
 - The breach of planning control as alleged in the notice is: Without planning permission, the installation of an external security shutter at the property.
 - The requirements of the notice are: Remove the unauthorised external security shutter from the shopfront including the shutter box, guide rails and curtain.
 - The period for compliance with the requirements is: Within 2 months from the date when this Notice takes effect, namely the 29 August 2012.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. I direct that the enforcement notice be corrected by the deletion from Schedule 6 of the words ", namely the 29 August 2012". Subject to this deletion, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Enforcement Notice

2. Paragraph 6 of the Notice refers to compliance "Within 2 months from the date when this Notice takes effect, namely the 29 August 2012". The inclusion of the specific date is not necessary and the date has in any case been superseded because of the appeal. The Notice could be amended by the deletion of ", namely the 29 August 2012" without causing injustice, leaving the date for compliance as two months from when the Notice takes effect.

Reasoning

3. The ground of appeal is that planning permission should be granted. The main issue is the effect of the external security shutter on the character and appearance of the building and wider local centre.
4. The property consists of a ground floor retail unit that is part of a shopping parade of a dozen or so shops on the north-west side of Penn Road. The parade consists of a line of two-storey properties with commercial uses to the ground floor and separate accommodation above. Residential properties front the south-east side of this part of Penn Road.

5. The property, occupied as a hot food outlet, has a shopfront consisting of a fascia with a glazed shop front below with flat "pilasters" to either side. A roller shutter box has been erected beneath the fascia; this is of slightly greater depth but lesser width than the fascia but matching the width of the glazed shopfront. Shutter guide rails have been placed to both sides of the glazed shopfront. The shutter has a large element of punched holes above a solid shutter base that would provide a degree of visibility through to the shop front when closed.
6. The Council's Supplementary Planning Guidance No. 5: *Shopfront Design Guide* [SPG5] addresses the issue of shopfront security and seeks to discourage external roller shutters or all types, unless there is a proven severe and persistent crime problem. This guidance has been subject to public consultation and carries significant weight. SPG5 indicates that in most circumstances sufficient shopfront security can be achieved by the use of laminated glass, or internal tube and link roller grilles or a combination of the two. It further states that where exceptional circumstances exist and roller grilles are accepted, then every effort should be made to build shutter boxes into the structure of the shopfront.
7. There are other examples of the use of roller shutters within this parade, including the adjacent shop, but the majority of the units do not use them and have normal shop fronts that contribute to the character and appearance of the area even when closed. When closed the shutter, even with a degree of visibility provided by the punched holes, would provide a blank and relatively featureless front to the property; this provides a somewhat blank and forbidding appearance and creates a deadening effect to the frontage of the parade that detracts from the character and appearance of the building and wider local centre. The shutter box and guiderails, even though of the same colour as the shopfront, provide an uncouth addition to the building. The other shutters either had permission under previous policy guidelines or are now exempt from enforcement action. Shutters have been removed from two units following intervention by the Council.
8. For these reasons, the external security shutter harms the character and appearance of the building and wider local centre contrary to Policies ENV3 and CSP4 of the adopted Black Country Core Strategy 2011, saved Policy D9 of the Wolverhampton Unitary Development Plan 2006 [UDP] and SPG5. These aim for high quality design that enhances the unique attributes the area offers in terms of its local character. Saved UDP Policy D9 carries substantial weight as it is consistent with the National Planning Policy Framework which clearly indicates the need to secure high quality design.
9. I note that the appellant indicates that he chose to have a roller shutter fitted when considering the shop front, although this was not part of the design permitted by the Council. It is also stated that the shutter has not been used since the Council notified him that there was an issue and that he is willing to provide an undertaking not to use the shutter. However, this would not remove the shutter box and guide rails that contribute to the poor appearance of the front of the property.
10. Whilst the appellant points to incidences of the area not being crime free, there is no evidence of substance to suggest that there is a severe and persistent crime problem, and nor is there any evidence to indicate that less obtrusive alternative measures would not be adequate.
11. The Council has indicated three appeal decisions¹ relating to roller shutters, but each proposal has to be assessed on its own merits. My assessment in this case is based on the specific circumstances of this appeal, particularly in terms of the characteristics of the site, its situation and its setting in relation to the surrounding area. The attitudes and policies of other nearby authorities are matters for their own determination and

¹ APP/D4635/A/09/2103115: 8 Springhill Lane, Penn
APP/D4635/A/10/2142400: Jesters, 514 Stafford Road, Fordhouses
APP/D4635/C/12/2170519: 2 North Street, Wolverhampton

cannot be used in the assessment of proposals within this Council's area. The lack of specific advice from the Council to the appellant as to the need for planning permission for a security shutter is not a reason to allow the retention of otherwise unacceptable development.

12. I also note that the appellant indicates that the business may find the expense of any works difficult to absorb if required to remove the shutter box, but this is an integral part of the roller shutter and allowing its retention would not ensure that the total harm occasioned by the security shutter is rectified. Whilst the Council indicate that they are sympathetic to this position, this would be a matter for discussion between the parties and could be accommodated under s173A(1)(b) whereby a local planning authority may waive or relax any requirement of a notice.
13. For the reasons given, I conclude that the appeal should not succeed. I shall uphold the enforcement notice, subject to correction, and refuse to grant planning permission on the deemed application.

Andrew Jeyes

INSPECTOR