

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Committee 9th January 2008
AUTHOR/S: Corporate Manager – Planning and Sustainable Communities

APPEALS AGAINST PLANNING DECISIONS AND ENFORCEMENT ACTION: SUMMARIES OF DECISIONS OF INTEREST – FOR INFORMATION

Purpose

1. To highlight recent Appeal decisions of interest forming part of the more extensive Appeals report, now only available on the Council's website and in the Weekly Bulletin.

Summaries

Mr & Mrs N Fitzgibbon – Erection of Dwelling – 20 Park Lane, Fen Drayton – Appeal allowed.

2. The main issue in this appeal was the effect of the proposal on the character and appearance of the surrounding area and on the living conditions of surrounding residents.
3. The appeal site is a triangular-shaped area of side garden in an area characterised by detached houses, many of which are 1½ storeys in height with low eaves. The area has a low-density feel with dwellings set in relatively spacious plots. The proposal involved the demolition of an existing conservatory and sub-dividing the plot to allow a new 1½ storey, low-eaved dwelling to be erected some 2.8m away from the main elevation of no. 20.
4. The inspector noted that the appearance of this part of Park Lane had recently been changed by the erection of a 1.8m high close-boarded fence along the site boundary. This was erected under permitted development rights. In his view, the new dwelling would sit comfortably within its plot maintaining the open feel of the area. While the space between the dwelling and no. 20 would be less than that which exists between most of the dwellings in the locality, this would not be particularly noticeable in views along Park Lane. The inspector was not persuaded this would be unacceptably harmful to the street scene. It would not appear cramped in its plot nor leave no. 20 with too small a garden area. The site lies some distance from the village conservation area and would have no impact on it.
5. While not part of the Council's case, neighbours had raised concerns relating to physical impact, overlooking and overshadowing. While the proposal would cause some impact in each case, the inspector was satisfied that this would not be unacceptable. Further concerns regarding the amount of car parking provision or traffic safety were also not considered to be significant.
6. Planning permission was therefore granted subject to conditions regarding materials, landscaping, removal of permitted development rights, a restriction on further openings and the use of obscure glazing in key elevations, and a restriction on construction times.

Mr R Dias – Non-compliance with conditions to allow premises to be used as a takeaway – 44 Station Road, Histon – Appeal dismissed. Appellant's application for costs dismissed.

7. This appeal followed previous applications and appeals to allow takeaway use from premises formally known as 'Romanos' and now trading as 'Ayesha Tandoori'. The premises have permission to trade as a takeaway between the hours of 11 a.m. and 2.30 p.m. following a successful appeal in 2005. An appeal to allow all-day opening as a takeaway was previously refused in the same year. This latest appeal sought to remove a condition to allow the premises to trade as a takeaway up until 11.30 p.m.
8. The appeal was considered by way of a hearing. The Parish Council was represented and opposed the appeal.
9. The main issue was the impact of living conditions of nearby occupiers. The appellant was adamant that ancillary takeaway sales have already operated for several years without complaint and that the appeal merely sought to regularise this. In response, the Council argued that any permission granted for takeaway sales could result in the use becoming the dominant use and this was unacceptable.
10. The appellant confirmed that a Premises Licence has recently been granted which allows the sale of alcohol for consumption on the premises until 1.00 a.m. or 1.30 a.m. depending on the day of the week. He argued that this could not have been issued had there been any substantial evidence of difficulties arising from the present operation. Nonetheless, the appellant was unable to show that takeaway sales have been a substantial part of the business on the site. In view of the objections to the planning application, the inspector was satisfied that the existing ancillary level of takeaway use has not been without some controversy.
11. It was argued that on-street parking around the site is in high demand, so that customers would not be likely to park outside dwellings with the consequent potential for noise and disturbance. While the appellant had produced a parking survey to demonstrate this, the inspector's own evening visit showed there were several places available. The inspector also shared the Council's view that it is difficult to manoeuvre a vehicle when all of the on-site parking spaces were occupied. He judged that a significant proportion of drivers arriving to collect a takeaway meal would be tempted to park outside houses in Station Road and Saffron Road.
12. The inspector reasoned that removing the disputed condition would still only allow takeaway sales as an ancillary operation. While I am not convinced this is correct, he nonetheless still considered that even on this limited basis, the use would have a significant potential for noise and disturbance to adversely affect residents in the evening. This impact would be different than what might be perceived during the day. This was in accordance with findings of the previous appeal inspector when permission for all-day opening was refused in 2005.
13. The possibility of a temporary planning permission was considered but discounted. The potential for noise and disturbance from a takeaway use is predictable so as not to warrant an experimental period. In any event the nature of the operation might change over time. Similarly, a personal permission was also contrary to advice in Circular 11/95 – The Use of Conditions in Planning Permissions. The appeal was therefore dismissed.

14. The appellant applied for an award of costs because of what he considered was unreasonable behaviour by the Council. He reasoned that the Council had failed to produce any factual evidence about the effects of the takeaway use on the area. The use had been operating for 12 or 13 years and the Council had never taken action in that time. The successful licensing application shows there are no concerns about operation of the business late at night.
15. In dismissing the application, the inspector appreciated the appellant's frustration at the Council's resistance to what the appellant perceived as a modest change to the operation of his business. Nonetheless, it was open to the Council to form a judgement about the likely effects of the proposal and it is unnecessary for it to obtain evidence of those effects before making a decision. The nature of a takeaway business is well enough known for a local planning authority to decide on its likely impact. It does not follow that a lack of complaints in the past means there will be no harm in the future. Only limited weight should be given to the licensing application as this is governed by separate legislation and would have been judged against separate criteria.
16. The Council had therefore not acted unreasonably and an award of costs was not justified.

Mr S Gardner and Ms A Goodman - Retrospective consent to retain entrance gates and alterations to gate pier to form post box and control panel for gates – Haslingfield Manor, Haslingfield - Planning and Listed Building appeals allowed

17. The manor house is listed grade II*. The brick piers are listed grade II. Since the appeals were lodged, the Council had granted planning and listed building consent authorising the retention of the gates, which have been inserted between the brick piers.
18. Bearing this in mind, the inspector determined the appeals on the basis that permission was now being sought only for the post box and covered key pad which were to be inserted in the eastern gate pier. The main issue, therefore, was whether the alterations would preserve the special character of the listed gate piers.
19. In allowing the appeals, the inspector noted there would be no loss of fabric important to the special interest of the pier. In doing so, he took into account that the pier has been either largely or wholly reconstructed in the recent past. The introduction of two comparatively small features, finished to match the nearby entrance gates was acceptable and would preserve the special interest of the piers. It followed that the contribution the piers make to the character and appearance of the conservation area would also be preserved.
20. The inspector noted third party representations, which were concerned almost exclusively with a dispute concerning access to land through part of the appeal site. These were matters of private legal rights and were not before the inspector to consider.

T Willers – Removal of condition requiring screening to be attached to eastern side of tiger walkway – Shepreth Wildlife Park, Station Road, Shepreth – Appeal allowed

21. The Condition was imposed by the Planning Committee to address concerns regarding overlooking of the first floor windows of nos. 1, 2 and 3 Edieham Cottages, Angel Lane, opposite the walkway. The walkway is 5.7 m above ground level and passes over and between two animal compounds.
22. From what he saw on his site visit, the inspector found that visitors using the walkway would be unlikely to turn their attention away from the “interesting” animals in the two compounds. An existing hedge between the animal park and the road had been allowed to grow and that it “completely obscures the gardens and ground floor windows all almost all of the first floor windows” of the houses opposite. Even without the hedge, the houses are sufficiently far enough away from the walkway to ensure there would be no loss of privacy. Given the opening hours of between 10 a.m. and 6 p.m. (or dusk if earlier) even any perceived loss of privacy is likely to be limited as the rooms would not be in use at this time.
23. In the circumstances, there is no need to fix an additional screen to the walkway itself. The condition has been deleted.