

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Committee 4 April 2007
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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

Ms A Porter – Erection of retaining wall and infilling of bank to create an enlarged garden area – Rose Cottage, High Street, Horningsea – Appeal against enforcement notice allowed. Application for costs against the Council dismissed.

2. Enforcement action was authorised after a series of protracted negotiations involving the Cambridgeshire County Council as potential landowner, the Parish Council and the Horningsea Millennium Green Trust. The reasons for issuing the notice was alleged harm to the character and appearance of the conservation area, nature conservation interests and the future health of an Oak tree within the site. The concerns regarding nature conservation were later withdrawn.
3. The appellant had undertaken the works to reinforce the side of her rear garden, which abuts the bank of a stream. The bank was said to be wearing away and there was a need to provide better security for her children. These works had the approval of the Environment Agency, which had advised on the type of work that should be carried out.
4. The appellant argued that in the first instance, planning permission was not required for the timber retaining wall as it was a means of enclosure below the height required before planning permission is needed. The Council argued that the wall does not have an enclosing function and as the County Council owns part of the land, the works have involved a material change of use of the land. The inspector made it clear that he did not want to adjudicate on whether the County Council's objections and claims to the land were correct. As he found that the wall does not have an enclosing function, he concluded that planning permission was required. The land ownership issue was therefore immaterial.
5. The inspector did not doubt the works were necessary, nor that the roots of the tree had become exposed through erosion of the bank. He found that the appearance of the timber revetment was acceptable, given that it had started to weather and would continue to do so. It had been "carefully designed, using timber components of suitable form in a simple, functional manner". The appellant had introduced new planting which would help to screen the revetment. An existing fence on top of the bank is an insubstantial element and taken as a whole the development was

considered not to harm the character and appearance of the conservation area. Planning permission was therefore granted for the alleged breach.

6. The appellant applied for costs on the basis that the Council had failed to explain why planning permission was required. The enforcement notice was a disproportionate response to the alleged breach of planning control. Legal costs had been incurred. The Council replied that the appellant had been made fully aware why the alleged works needed planning permission. The reasons for issuing the notice had been fully substantiated.
7. In dismissing the costs application, the inspector concluded that the issues raised did not suggest an easy conclusion. There were several issues to be considered and the Council had been obliged to consider both the need for planning permission and the effect on the conservation area. In all the circumstances, the Council had been correct to take enforcement action and it had not acted unreasonably.

Comment: The County Council has continually claimed that it owns the land on which the retaining wall has been erected. It will now have to decide if it wishes to take any further action in its capacity as landowner.

P Norbury – Use of land as general builders yard and storage including the retail sale of goods, siting and letting of steel containers, erection of buildings and formation of aggregate bays – Clunchpits, London Way, Melbourn – Appeal against enforcement notice part allowed/part dismissed

8. This appeal involved two plots of land previously used as a timber yard. There is an existing lawful development certificate that allows use for the wholesale distribution of timber including manufacturing of pallets and ancillary processing. Permission also exists for a machinery storage building. The notice alleged harm to the character and appearance of the area and highway safety concerns from the increased use of London way and its junction with Back Lane. The appeal was considered by Way of a hearing at which two local councillors supported the appellant.
9. The inspector was mindful of the fall-back position should the appeal fail. In this case, it was likely the use as a timber yard could resume and in his view this was no more acceptable visually than the existing use as a builders yard. The additional buildings were not themselves visually intrusive. Retail sales had now ceased. He did agree, however, that the stationing of some 56 steel shipping containers was visually intrusive and were inappropriate in this rural area. They were used for a variety of storage purposes unrelated to the main use of the site and were likely to result in increased vehicular movements along London Way.
10. If permission were to be given for mixed use as a timber yard/ builder's yard, the inspector reasoned that conditions could be imposed that would provide greater environmental protection and require improvements to London Way in the interests of road safety. On balance, he found this to be a better approach to dismissing the appeal in its entirety.
11. Planning permission was therefore granted for the continued use as a timber yard as previously confirmed lawful and as a general builder's yard restricted to the larger (and less visually intrusive) plot of land within the site. No part of the land shall be used for retail sales. Other conditions restrict the height of stored materials to no more than 3 metres; hours of operation to be only between 0700 and 1700 Monday to Friday and between 0700 and noon on Saturdays; the need for landscaping and boundary treatment; and improvements to London Way. The landscaping, boundary

and highway works were required to be submitted for approval within one month (i.e. before 23 March 2006). At the time of writing, these details were still awaited.