

## **SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL**

---

**REPORT TO:**

Planning Committee

4<sup>th</sup> February 2009

**AUTHOR/S:**

Corporate Manager – Planning &  
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. These form part of the more extensive Appeals report, which is now only available on the Council's website and in the Weekly Bulletin.

#### **Summaries**

##### **H R Builders Limited – Erection of 20 affordable dwellings – Land adjacent to St George's Court, Impington – Appeal dismissed.**

2. The Planning Committee refused the application because of the perceived harm to the living conditions of the occupiers of nos. 6 and 7 St George's Court and the effect on highway safety. Although the application was submitted in outline, the layout and means of access were to be determined at this stage. The appeal was considered by way of written representations.
3. Access would be between nos. 6 and 7 St Georges Court. Their front elevations would face the new road. The inspector accepted that the development would generate around 120 vehicle movements a day. Because the two properties are close to the road and vehicles would pass close to their windows, the inspector agreed that this would cause an unacceptable degree of noise and disturbance. This would be exacerbated by headlights shining into windows and the presence of calming measures, which would mean vehicles would take longer to pass by. This could not be mitigated by screening or altering the road surface.
4. A total of 24 parking spaces were proposed. The Council's average maximum parking standards required a total of 30 spaces and the inspector concluded that this level of provision was warranted in this location. The inspector accepted the Parish Council's evidence on local facilities and car ownership and the conclusion that this would result in a higher level of car ownership than was being provided for. Insufficient parking for residents would lead to the use of visitor's spaces and on-street parking. This is very limited in St George's Court and would lead to obstructions in the road and the proposed turning bay. Overspill parking would occur in St George's Way, which already suffers from parking problems. The net result would be to increase the risk of accidents with significant implications for road safety.
5. The inspector accepted there was a need for affordable housing, but that this did not outweigh the identified harm. The appeal was therefore dismissed.

**Landmark Real Estate – Erection of dwelling – Hillside, Orwell Road, Barrington – Appeal dismissed**

6. The main issues in this appeal were the effect on the character and appearance of the area and effect; the effect on neighbours' living conditions; and the implications on highway safety. The appeal was determined following a hearing, at which the Parish Council was represented. The Council was supported by the local highway authority.
7. The inspector agreed with the Council that the existing buildings on the site provide an impression of separation between the existing house and the nearby Orwell Terrace. This is important at this edge of village location. In contrast, the proposal would create a consolidated block of development, which would jar with the general pattern of development nearby. By and large, this consists of single dwellings with good separation from neighbours. The proposal would therefore be harmful to the character and appearance of the area.
8. The north elevation of the proposed house would be parallel to the rear of nos. 1-3 Orwell Terrace. Adjustments had been made to the scheme following discussions with officers so that a separation distance of between 14m and 16m would be achieved. The inspector visited one of the rear gardens in Orwell Terrace and found that the outlook is already compromised to some extent by the walls of the existing outbuildings on the appeal site. Nonetheless, he considered that as former agricultural buildings they had a certain rustic appeal. As a matter of fact and degree, the size, siting and design of the new dwelling would appear overbearing.
9. Because the new dwelling would be due south of nos. 2 and 3 Orwell Terrace, the inspector found there would be a substantial reduction in the amount of sunlight and daylight reaching back gardens. While the distance between properties would exceed the standards set out in the Council's draft Design Guide, this document should only be given limited weight while it remains in draft form. The occupants of no.1 would also suffer some adverse effect on outlook and a reduction in daylight and sunlight in their back garden.
10. Taken together, the harm to residential amenity was significant and therefore in conflict with the objectives of development plan policy.
11. The various highway experts were unable to agree the relevance of technical advice. Nonetheless, the appellant agreed that visibility could not be achieved in either case. There was no record of any accidents in the vicinity of the appeal site and other nearby properties also had accesses, which the appellant considered were substandard in terms of visibility. Nonetheless, the inspector accepted there would be implications for highway safety, which could not be overcome.

**Mrs P E Francis Trust – Erection of dwellings and car port – 64 Station Road, Stow-cum-Quy – Appeal dismissed**

12. Although this appeal was for a single dwelling in the side garden of the property, it was refused for four separate reasons.
13. Highway visibility in one direction was considered to be inadequate. There had been reported accidents at the junction of Station Road and Stow Road. The appellant felt that existing traffic calming measures and the limited trips associated with one extra dwelling would be insignificant. However, the inspector considered that even one dwelling would still contribute to a diminution of highway safety.

14. While the siting of the building was satisfactory, its design was found to be intrusive and out of character with its surroundings.
15. Despite the design objections, the Council argued that the site was capable of accommodating more than one dwelling. This was to make more efficient use of land, which in turn would allow an element of affordable housing to be provided. The inspector agreed.
16. The Council also requested a contribution towards open space in line with emerging policy requirements. The inspector found that as the policy document was only in draft form, it could only be given limited weight. However, there was a justified need for such provision. In the absence of a legal undertaking to secure the provision, the proposal was unacceptable.

**Mr M Page – Change of use from light industrial to licensed premises (private members club) – 16a Norman Way Industrial Estate, Over - Appeal dismissed**

17. The two main issues in this appeal were whether the use would be sustainable development and the effect of noise and disturbance on the living conditions of nearby residents. The application was subject to several objections, particularly on the nature of the use. The inspector confirmed that the morality of the use, which has already commenced, was not a matter for him to consider.
18. Planning policies seek to minimise the need to travel and reduce car dependency. On the evidence before him, the inspector concluded that a high proportion of club members would use their own private cars or taxis to transport them to and from the premises. He saw no need why the proposed use should be in a rural area and a town centre location would provide alternative options for travel. The use was not therefore sustainable.
19. Additional vehicle movements generated by the use after midnight would be likely to exceed 20 on Friday and Saturday nights. Although the nearest houses were some way away, it is likely that within this quiet rural area, residents would be aware of activity connected with the club. This would be particularly so in the summer months when windows were open and members would be more likely to spend time outside the building. It was unlikely that other uses on the industrial estate would be operating at this time. A trial run would not overcome the objections raised.

**Whitfield Group – Use of premises without complying with conditions imposed on a previous planning permission – Unit J, Broad Lane Industrial Estate, Cottenham – Appeal allowed. Appellant's application for costs against the Council dismissed**

20. This appeal effectively sought retrospective approval for all internal and external plant, equipment and machinery installed on the site. It also sought to vary a condition of the planning permission which states that machinery shall not be used between the hours of 6 p.m. and 8 a.m. on weekdays, and shall not be used on Sundays and Bank Holidays. The application proposed that two fume extract units and four air conditioning units are operated other than between the permitted hours on Mondays to Saturdays.
21. Ultimately, the appellant had submitted four applications. The first was withdrawn. The second was dismissed at appeal, mainly because of a lack of information. The third was refused under delegated powers and was the subject of this appeal. The

Planning Committee subsequently refused a fourth application following a Committee site visit. The appeal was considered by way of a public inquiry and the two local residents most affected both gave evidence. The inspector carried out site visits during the day and at night.

22. The main issue was agreed to be the effect of noise from the equipment and machinery on the living conditions of the occupiers of 2 Monet way and 15 Courtyard Way. The inspector was therefore required to assess the reasonableness of the condition restricting hours of operation. In doing so, he was made aware of the extensive history behind the applications and the various noise assessments that had been undertaken.
23. As the development plan does not provide any guidance as to how an unacceptable noise impact should be assessed, the inspector found that noise guidelines are of great assistance in determining the impact. Both sides agreed that the noise assessments that had been carried out should be given substantial weight. While compliance with such guidelines could not be conclusive, the inspector reasoned they were indicative of what should be acceptable.
24. It was accepted that noise levels within the bedroom at night should be less than 30dB(A). This was consistent with the findings of the previous appeal inspector. The corresponding outdoor daytime value is 38dB(A) and this offers more protection than World Health Organisation guidelines. From his visits to the site and neighbouring property, the inspector recorded that the background noise level is louder than the noise from Unit J. Unlike the previous inspector, he did not accept that the area is a quiet rural area and the noise from the equipment and machinery should be considered in this context.
25. It was common ground, based on noise readings, that both the day and night time noise readings are lower than accepted guidelines. Based on what he heard, the inspector found that while the noise from the hum of the extract units was audible, they "... would not have interfered with sleep... the living conditions of no. 15 within its garden would be limited and would not be unacceptable ... inside no. 15 with the patio doors open to the dining room, lounge and breakfast room the noise from Unit J was not intrusive ..."
26. The inspector noted that the occupant of no. 15 has been the most affected. He had experienced noise sufficient to be a statutory nuisance when the business first started operating on the site. The inspector could understand why the occupant was still distressed by noise he hears, even though this is now at a significantly lower level. The Planning Committee had found the noise during its site visit to be excessive, although the appellant's consultant did not. Officers' assessment of the noise found more often than not that noise levels were acceptable.
27. Taking into account all the evidence before him, the inspector concluded "... it is clear to me that, on balance, the noise from the operation of equipment and machinery does not have an unacceptable adverse impact on the acoustic environment of 15 Courtyard Way and 2 Monet Way." Given this conclusion, the inspector saw no need to address whether the loss of approximately 40 jobs was a material consideration.
28. The appeal was therefore allowed and a new planning permission granted for the use of the site, along with the equipment and machinery. The permission includes a number of conditions. These include no outside storage of materials or equipment; no machinery, except the existing units the subject of this appeal being used between 6 p.m. and 8 a.m. on Mondays to Saturdays and at no time on Sundays or Bank

Holidays; a restriction on noise levels from the equipment and machinery; time limiters to be fitted to machinery; restrictions on the refilling of gas cylinders; and a contingency plan for an alternative fume extract unit to operate should the key fume extract unit (unit 3) be unavailable due to breakdown or servicing.

29. The appellant's claim for costs was on the basis that the Council had not paid due regard to the technical evidence agreed by its officers. Instead it had sought to protect purely private interests. The Council's evidence at the inquiry was inconsistent. It had behaved unreasonably in refusing the application. For the Council it was claimed that the situation was entirely of the appellant's own doing. It was entirely appropriate that the Council should base its decision not only on technical advice, but on what neighbours hear and what the Planning Committee heard on its site visit.
30. The inspector agreed that technical guidance was important, but was still just guidelines. It was not the sole determining factor. As well as neighbours, both the Planning Committee and the Council's appeal witness had heard the extent of the noise and were entitled to exercise their judgement in stating it was unacceptable. The Council's desire to protect private interests was being exercised in the public interest. The Council had not acted unreasonably and an award of costs was not justified.