

APPEALS PANEL 3

WEDNESDAY 19 AUGUST 2015 AT 2.05PM

PRESENT: Councillors Boaden (as substitute for Councillor Bell), Mrs Mallinson (as substitute for Councillor Collier) and Ms Williams (as substitute for Councillor Stothard).

OFFICERS: Director of Governance
Director of Economic Development
Development Manager

ALSO

PRESENT: Appellants
Local resident in support

1. APPOINTMENT OF CHAIRMAN FOR THE MEETING

In the absence of the Chairman it was agreed that the Panel would appoint a Chairman for the meeting.

RESOLVED – That Councillor Boaden be appointed as Chairman for the meeting.

2. APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of Councillors Bell, Collier and Stothard.

3. DECLARATIONS OF INTEREST

There were no declarations of interest in respect of the complaint.

4. MINUTES OF PREVIOUS MEETING

RESOLVED – That the minutes of the meeting held on 16 June 2015 be deferred to the next meeting for approval.

5. PUBLIC AND PRESS

RESOLVED - That in accordance with Section 100A(4) of the Local Government Act 1972, the Public and Press were excluded from the meeting during consideration of the following item of business on the grounds that it involved the likely disclosure of exempt information, as defined in Paragraph Number 1 of Part 1 of Schedule 12A of the 1972 Local Government Act.

6. COMPLAINT REGARDING A DEVELOPMENT

Consideration was given to covering report ED.31/15 and supporting background papers regarding a complaint made about a development and the way the City Council have dealt with objectors.

The Chairman welcomed the appellants and introduced the Panel and Officers. He clarified the role of the Panel and stressed that they did not have the power to change any planning decisions but would consider carefully how the Council had dealt with the development and residents.

The Chairman asked the appellants to summarise their appeal as clearly as possible and what outcome they hoped to achieve from the hearing.

The appellant thanked the Panel for taking the time to read the substantial amount of correspondence. She gave an overview of the location of neighbouring properties in relation to the development and the length of time the development had taken. She stated that they had objected at each stage of the development within the Council's protocol and felt let down that they had not been extended the same courtesy in return. They felt that they had been continually obstructed in getting relevant information recognised.

The appellants believed that should an application for the development be submitted now it would be refused permission and they believed that the planning department were of the same opinion. The appellant explained that the original application presented by the developer did not resemble what had been constructed. The appellant added that the design and access statement associated with the original development, which had not been altered, was not fit for purpose.

The original application had been accepted by the appellants even though they had felt it was unsuitable next to a listed building in a conservation site. They had not objected as they believed the Council were the professionals and the appellants trusted the Council's judgement. The variations to the original application had all been classed as minor material amendments and the appellants questioned this as they felt the changes had been major and did not fall within the Government's Killian Pretty review as to what constituted a minor material amendment. The review also referred to the desire to stop 'building creep' yet the development had continued to creep up and resulted in a building which was 25% larger the original application.

The developer's determination to amend the original approval raised concerns as to how the Council were dealing with amendments and the constant recommendation for approval made the appellants investigate the National Planning Policy Framework. It was the appellants' view that the planning officer was misleading the Development Control Committee with incorrect details and figures and showed no regard to the Council's own policies. The Committee's decisions were based on the details outlined in the officers report and the appellants felt that the information contained within the reports were inaccurate. They added that it was their view that the architect was confusing everyone with manipulated documents and false plans regarding size and position of the adjacent properties.

The appellant informed the Panel that, according to Government guidelines, all variations and amendments must incorporate a drawing number and title; revised plans

must include suffixes and specify the nature of the revision. This had been a major problem throughout the application as many drawings had not contained suffixes or had not been in chronological order and any new plans had not included a list of changes contained within the drawing.

The appellant questioned why the case officer chose to dismiss the Conservation Area Advisory Committee report regarding the size of the development and felt there was no point in consulting them if the Council were not prepared to take on board the opinions.

The appellant stated that residents were faced with an unacceptable situation of complete lack of privacy and loss of amenity.

The appellants then outlined in some detail a number of planning issues which had been the result of variations or which had not received planning approval.

In summing up the appellant stated that they were frustrated and felt let down by the people they trusted, at each step of the process they had been dismissed and obstructed. They had not been opposed to the development of the site but the size and scale of the development, which the Council had classed as subjective, should not have been allowed to reach the proportions it had.

The Chairman asked the appellants for examples where the appellants had felt dismissed and obstructed. The appellant and the resident gave details of the Council taking no action regarding objections made, questions which had not been answered and inaccurate figures contained in an officer's report.

The appellant commented that they felt that the Council operated on the side of the developer.

A Member reminded the Panel that the Council had carried out enforcement action against the developer.

The appellant felt that the developer was abusing the system and gave a list of issues happening on site which did not match the planning approval and the Council were not stopping. They gave details of amendments which were not listed in variations to the applications and the difficulty they had in identifying the changes. In response to a question they confirmed that initially they had contacted the Council to ask what the changes were. They added that the base plans for the application were incorrect as they showed the neighbouring properties to the development in the wrong place. The appellants had asked for the plans to be corrected and had raised the matter with the Planning Inspectorate who informed them the ordnance survey plans were often incorrect. The appellants questioned why the plans had not been corrected.

For clarification purposes the Director of Governance asked the appellants if they were happy for the Panel to concentrate on areas that the Council had not provided a

response or where follow up work had not been undertaken. The appellants agreed and stressed that their main concern was their loss of privacy and the lack of action on the Council's part. Some enforcement action had been taken against the developer, the process had taken six months but on that occasion the Council had kept them fully updated on the progress; they wanted to be kept informed of the work the Council was undertaking regarding the development.

A Member asked who made the decision that applications were minor material amendments. The Director of Governance explained that the Case Officer made the judgement with the Director of Economic Development or Development Manager under delegated powers. A non-material amendment was dealt with under the Council's Scheme of Delegation.

The appellant commented that the neighbours' of a development should be considered and informed when a non-material application was submitted. This had not happened with the development, the amendment had been found on the website with several variations. The final plan had been submitted the day it was approved so the residents had no time to consider the amendment.

The appellant wanted the outcome of the Panel to be that all unauthorised work be stopped and removed.

The Director of Governance reiterated the role of Panel and reminded the appellants that they did not have the power to overturn or alter planning applications or take enforcement action. The Panel would look at the complaint and the lack of action and response to questions. The Panel would look at the procedures that were in place and how the appellants had been dealt with and responded to.

The Panel thanked the appellants for their input and advised that they would be informed by letter within 20 working days of the Panel's decision. If the appellants were not happy with the decision their next course of action would be to take the complaint to the Local Government Ombudsman, details of which would be included in the letter. The appellants left the hearing at 3.20pm

The Panel invited the Director of Economic Development and Development Manager to the meeting.

The Chairman summarised the appellant's complaint and a Member asked for clarification on the difference between non-material amendments and minor material amendments.

The Development Manager responded that the amendment would be judged on its own merits based on what the original permission was. If there were no specific issues raised or the amendment did not affect the overall permission granted it would be non-material. He added that the Council was not required to consult on non-material amendments. In this case the plans and drawings were placed on the website and the appellants concerns were noted, this was out with the normal procedure. The

developer had submitted two non-material amendments and the rest of the amendments were variations of conditions. The process for variations of conditions was the same as non-material amendments.

The Chairman informed the officers that the appellants had seen the amendment on the internet and a number of variations had been made to it before being approved the day the final plan was submitted. The Development Manager confirmed that the process involved discussions with the developer to vary the amendment to meet planning regulations. Officers had 28 days to process a non-material amendment.

The Director of Economic Development highlighted the difficult position officers were placed in between developers and objectors and she had to ensure decisions were in the best interest of the Council.

Members were concerned that there was a perception that the Council was not being honest with the appellants. The Director of Economic Development assured Members that, in this case, officers had gone beyond what they would normally do and the case had taken an enormous amount of officer time.

The Chairman explained that the appellants had given examples of work which had been undertaken on site out with planning approval and had concerns that the Council had not stopped the work. They had not been kept informed of any actions that the Council was taking to deal with the issues.

The Director of Economic Development reminded the Panel that the developer had submitted retrospective applications for some of the work and the developer had been given a deadline to replace some of the work. The Director had to consider carefully when the appropriate time for enforcement action was to ensure it was in the best interests of the Council.

The Development Manager informed the Panel that he had met with the appellants and visited the site to discuss the action the Council was taking. The issues regarding the number of units and floors within the development were being investigated and a response had not yet been sent to the appellant but they were aware the Council was moving forward on the issue.

The Director of Economic Development explained that the case had been very challenging for officers due to the amount of correspondence received that required a response. The Development Manager confirmed that the correspondence was ongoing and responses to current correspondence were outstanding.

The Chairman asked if the footprint of the development was larger than the original and was there a limit to what was an acceptable change. The Development Manager explained that there were no guidelines on the size of a development. The development had the same number of units on site as the original plan. There had

been some dispute regarding the increase to the size of the building and the appellants had not accepted the change as a variation to the original scheme. The appellants had disputed some of the figures and the Council had asked for the figures to be checked externally.

With regard to the incorrect base plans, the Development Manager explained that the base plans were prepared by Ordnance Survey and submitted by the applicant. The case officer had carried out a site visit to measure the distance of the neighbouring properties to the development but the base plans had not been altered. He added that officers had been responsive to issues raised.

The Director of Economic Development added that the Council would continue to respond to issues raised and had empathy with the appellants but the Council had to be objective.

The Development Manager informed the Panel that there had been a long gap in responding to correspondence sent in January 2014, this had been resolved and all other correspondence was recent.

The Panel discussed issues with regard to the developer and how they could be resolved in future. The Director of Economic Development had met with the developer to encourage pre-application meetings.

The Panel raised the appellants concerns that all of the amendments had been recommended for approval by officers. The Development Manager responded that the case officer's judgement was subjective but Development Control Members made the decision and had on occasion gone against the officer's recommendations. The Director of Economic Development clarified that the officers produced the report but she made the recommendation and there had been not been a reason to recommend refusal. The Development Manager added that the developer's original application had been recommended for approval but the Development Control Committee had refused the application and the decision had been upheld at appeal.

The Director of Economic Development felt that the Council could have produced a co-ordinated response to objectors at an earlier date. There had been a large amount of correspondence to a number of officers and it had been difficult to keep track of and respond to.

The Director of Economic Development and the Development Manager left the hearing at 4.35pm

The Panel then gave detailed consideration to written and verbal evidence that had been presented to them, prior to and during the hearing and:

RESOLVED –That the Panel:

Acknowledged that special resources had been allocated to co-ordinate the large amount of correspondence that this matter continued to generate

Found that the Council should appoint a designated officer to communicate with the appellants and others on the development

Found that the Council should communicate with the appellants what information it could as regards the ongoing circumstances surrounding the development.

(the meeting ended at 4.50pm)