



Appeals Panel 3

Date: Tuesday, 23 November 2021

Time: 10:00

Venue: Eden Room

Present: Councillor Mrs Elizabeth Mallinson, Councillor Dr Les Tickner

Also Present: Complainants (x2)
Complainant's Representative

Officers: Corporate Director of Economic Development
Head of Development Management
Principal Planning Officer
Principal Lawyer
Planning Officer (x1)

AP3.02/21 APOLOGIES FOR ABSENCE

An apology for absence was submitted on behalf of Councillor Betton.

AP3.03/21 DECLARATIONS OF INTEREST

There were no declarations of interest submitted.

AP3.04/21 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.

AP3.05/21 CORPORATE COMPLAINT – APPEAL AGAINST DEVELOPMENT MANAGEMENT SERVICE

(Public and Press excluded by virtue of paragraph 1)

The Chair introduced the Panel and set out the process for the meeting, she invited the Complainants and their Representative to summarise their complaint.

The complaint related to the granting of Planning Permission for the erection of a dwelling on a site adjacent to the complainant's property. The Complainants and their Representative set out the following issues in relation to the planning application process and the service they had received during:

- When seeking Planning Permission for the erection of their own property, the Complainants

were restricted on the siting of the property within the plot as it was required to be situated within the 'build line', this had affected the Complainant's design and location of their own property;

- The Case Officer for the application for their own property had advised that any further residential development in the area would be subject to the same constraint, however, it had not been imposed on the permission granted to the dwelling which was the subject of the complaint;
- The permitting of the erection of the dwelling had impacted the residential amenity of the Complainant's property and their representative outlined a number of areas where the proposal, in his view, was not compliant with relevant planning policy, for example policy HO 2 - Windfall Development as the dwelling amounted to 'tandem development', and that a number of documents had not been submitted with the application, for example a Heritage Impact Statement;
- The principal concern related to the access and associated visibility splays of the permitted dwelling. The Complainant's Representative asserted that the required distance of the visibility splays stipulated by the Highway Authority were not achievable. With the use of plans contained within the document pack he indicated that, when calculated with x point on the Complainants' boundary wall as the start of the splay, the required distances were not able to be fulfilled and would require a lower of height of said wall which was not within the applicant's ownership. Therefore, the plans submitted with the application were incorrect. As such the information that the Officer based their recommendation of the approval of the application and submitted to the Development Control Committee was not sound;
- The Complainant's Representative had submitted an objection to the application of the proposed dwelling on the basis that the visibility splays were not achievable. The Highway Authority had agreed that position and had submitted an objection to the application on that basis;
- The Planning Officer had not attended the site to confirm whether the visibility splays could be realised;
- The Highway Authority, through a different Officer, had subsequently accepted that the visibility splays were achievable and had withdrawn its objection;
- The Planning Officer's report to the Development Control Committee had contained the incorrect plans for indicated that the visibility splays could be achieved and permission was granted on that basis. The provision of safe access was a fundamental tenant of planning policy, therefore the approval of the application had not been appropriate;
- The Complainant's Representative had registered a Right to Speak on behalf of the Complainants when the application was submitted to the Development Control Committee, wherein he had set out concerns relating to the visibility splay, which had not been accurately recorded in the minutes of the meeting;
- During their initial contact the Complainant's had not been satisfied with the manner in which the Planning Officer had responded to their concerns and they noted that the Officer declined to attend a site visit, citing Covid 19 restrictions;
- The Complainants had subsequently contacted a senior Officer in the Development Management Service to raise their concerns in relation to the planning application and the Planning Officer's manner, they were not aware of any action taken as a result of that contact;
- During the process a number of responses from the Development Management Service to the Complainants had been delayed.

In response to questions from the Panel, the Complainants and their Representative confirmed:

- The Planning Officer had provided written confirmation that the visibility splay distances were accurate;
- The Planning Officer had conducted a site visit;
- The Complainants confirmed the time at which the planning permission to erect their property had been granted;

- The Planning Officer had asserted that the land type of the complainant's property and the dwelling were of different types e.g. agricultural and within curtilage.

The Chair thanked the Complainants for their submission and summed up the complaint as follows: the dwelling was granted Planning Permission on the basis of flawed information provided to the Development Control Committee by the Planning Officer, had correct information been provided the application would not have been approved. The Officers manner in dealing with the application and Complainants had not been satisfactory.

The Complainants agreed the summary.

The Chair thanked the Complainants for their input and advised that they would be informed, by letter, within 20 working days of the Panel's decision.

The Complainants and their Representative left the meeting at 11:14am.

Consideration was given by Members as to which Officers they wished to speak to in order to clarify issues relating to the complaint.

The Corporate Director of Economic Development, the Head of Development Management, the Principal Planning Officer and the Planning Officer were invited to attend the meeting at 11:39am

The Chair outlined the complaint and invited the Officers to respond.

In response to questions from Members, Officers confirmed:

- A scale drawing for the proposed dwelling at its access were requested from and submitted by the architect of the proposed dwelling which was used to confirm that the visibility splays, the Planning Officer had carried out a site visit and confirmed that the splays were able to be realised;
- In calculating the visibility splay, the Planning Officer, in line with standard procedure, had calculated the splay as starting from the centre of the existing access to the site, with the use of plans contained within the pack it was demonstrated that the splays were achievable. Photographs taken from the access were shown to members of the Development Control Committee. This demonstrated that the Complainants' wall would remain unaffected, with the wall requiring lowering as part of the visibility splay was within the applicant's control;
- The Planning Officer had not declined to undertake a visit to the site, but given the Covid 19 restrictions in place at the time of the request would not have been permitted to enter the Complainant's property;
- The Development Control Committee in determining the application for the proposed dwelling had undertaken a virtual site and viewed a series of plans relating to the proposal as well as considering the Officer's report, the Panel were shown the plans presented to the Committee;
- Occupiers of properties in proximity to a planning application site often desired the Case Officer to visit their property. Such action was not always necessary and given the boundary conditions between the Complainant's property and the proposed dwelling had not been necessary in this case for the Planning Officer to determine the impact on the Complainant's property;
- The senior Officer confirmed a conversation with the Complainants had taken place where they had expressed concerns with the Planning Officer's handling of the issues raised. The Officer had sought to direct them to the Planning Officer as the application was their case and as such it was not appropriate for him to intervene;
- The Complainant's application for their property had been approved under planning policies set out in the Carlisle District Local Plan 2001 - 2015, which would not permit development

outside of a 'building line'. In accordance with national planning policy the Carlisle District Local Plan did not impose such stipulations on development;

- The report to the Development Control Committee had covered all matters relating to the application for the proposed dwelling. Moreover, the Ward Member for the Complainants had attended the virtual site visit where a number of issues relating to the application were raised;
- Planning applications were subject to a number of stages relating to assessment and determination, it was not unusual for a consultee such as the Highway Authority to refine its view on a proposal during that process, with the final submission being considered to be its definitive opinion;
- All land subject to the visibility splay was within the applicant's control;
- There had been some issues relating to delayed responses to communications from the Complainants, Officers apologised for this and explained that they were the result of impacts from the amended ways of working required in response to Covid 19.

The Officers left the meeting at 12:13.

The Panel then considered all the evidence presented to them prior to and during the meeting and:

RESOLVED - That the complaint not be upheld as the actions of the Officers were correct and no evidence of maladministration had been found.

The Meeting ended at: 12:31