

APPEALS PANEL 3

FRIDAY 11 DECEMBER 2020 AT 2.00PM

PRESENT: Councillors Dr Davison, J Mallinson, Miss Sherriff (as substitute for Councillor Dr Tickner).

ALSO

PRESENT: Complainant x 2

OFFICERS: Corporate Director of Economic Development
Legal Services Manager
Development Manager
Planning Officer

AP3.01/20 APPOINTMENT OF CHAIR

It was proposed and seconded that Councillor Dr Davison be appointed Chair of Appeals Panel 3 for the 2020/21 Municipal Year.

RESOLVED: That Councillor Dr Davison be appointed Chair of Appeals Panel 2 for the 2020/21 Municipal Year.

Councillor Dr Davison thereupon took the Chair.

AP3.02/20 APOLOGIES FOR ABSENCE

An apology for absence was submitted on behalf of Councillor Dr Tickner.

AP3.03/20 DECLARATIONS OF INTEREST

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

AP3.04/20 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.

AP3.05/20 COMPLAINT AGAINST DEVELOPMENT MANAGEMENT

The Chair introduced the Panel and the Officers present in the meeting, she invited the Complainants to summarise their complaint.

The Complainants set out in some detail the reason for the complaint which related to the granting of planning permission for the erection of an extension at a residential property. The Complainants were representing their mother who resided in the property adjacent to that where the extension had been constructed.

The Complainants set out the principal aspects of the complaint as follows:

- The Development Management Service had failed to notify neighbouring properties of the planning application thereby preventing submission of comments or objections by those residents. Page 26 of the agenda document pack contained an excerpt from the software system used by the Development Management Team which showed no

representations had been received which should have prompted the Planning Officer to investigate further, but that had not occurred;

- The length of the process, in particular the failure of the Planning Officer to respond, for a period of three months to correspondence from a Ward Member relating to the matter, that item had not been submitted as part of the agenda document pack;
- The failure of the Officer who had responded to the Stage 2 complaint correspondence to address all matters raised by the Complainants;
- A request by the Complainants to be provided with copies of the photographs taken during his site visit was declined by Officers on the grounds of privacy. The Complainants had subsequently followed the matter up with a Freedom of Information request. The correspondence relating to that issue was not included in the agenda document pack;
- The design of the extension was not in accordance with Carlisle District Local Plan 2015 – 30 (Local Plan) policy HO 8 - House Extensions and was not in-keeping with neighbouring properties.

In response to questions from the Panel, the Complainants confirmed:

- The impact on the Complainants' mother had been significant as the extension was visible from the room which she principally used in her home, it preyed on her mind and affected her sleep. She had also been impacted by disturbance related to the construction works;
- The pictures included in the Complainants' submission to the document pack showed the proximity of the extension to their mother's property. The Complainants were of the view that Officers had not carried out a proper assessment of the application as it would largely have been allowed under Permitted Development Rights;
- The extension had resulted in a loss of light into their mother's property, particularly at evening times;
- The Stage 2 Corporate Complaint response had not responded to all the issues raised and gave the impression the Council was not adequately representing the Complainants' mother;
- They felt the Planning Permission ought to be reviewed.

The Legal Services Manager advised that the Panel was not able to re-open the application process as the permission had now been granted.

One of the Complainants noted that their mother had been denied the usual appeal pathway of Judicial Review as that process needed to commence within six weeks of the granting of permission. As no notification of the development had been received it had not been possible to pursue that course of action.

The Chair thanked the Complainants for their submission and summed up the main points from the complaint as follows: The failure to send out notifications to neighbours prevented their making representations which may have lessened the impact of the development; failure to respond to the complaint in a timely manner, in particular, Ward Member correspondence in a timely manner; failure to respond to all issues raised by the Complainants in the Corporate Complaint Stage 2 response; being required to request site visit photographs via a Freedom of Information request, and the design of the extension not being in-keeping with relevant Local Plan policies.

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 left the meeting at 2:53pm.

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

The Panel adjourned from 3:10pm to 3:18pm.

The Corporate Director of Economic Development, the Development Manager and the Planning Officer were invited to attend the meeting. The Chair outlined the complaint and invited Officers to respond.

In response to questions from the Panel, the Officers confirmed:

- Permitted Development Rights (PDR) allowed for householders to carry out some development of residential property without requiring planning permission: the application for the extension exceeded PDR, in terms of length but not height, the size of development allowable under those Rights. In assessing the application, the Officer had considered the proposal as a whole not just the portion which exceeded that which was permissible via PDR;
- PDR was a material consideration in the determination of the application as it constituted the backstop position;
- The extension was compliant with relevant planning policies, the matter of impact on residential amenity was considered under Local Plan policy HO 8;
- Had the Complainants' mother been notified of the application she may have made representations to the Case Officer. She may also have discussed the matter with her local Ward Member who was able to request that the application be submitted to the Development Control Committee for consideration. In the event of that Committee refusing permission, the applicant had the right to lodge an appeal against the refusal with the Planning Inspectorate who had the power to overturn a refusal of planning permission. Given the Officers' professional opinions, based on a thorough assessment of the proposal, it was likely any appeal would have been upheld, therefore the development would have received planning permission;
- Had representations been made on the matter of design, it was possible some negotiation may have been undertaken with the applicant. The extension was built to the rear of the dwelling and was screened from the Complainants' mother's property by an existing hedge, thus mitigating the visual impact to some extent, a portion of the extension remained visible. A different roof construction e.g. hipped or crown was likely to have had a greater visual impact than the one constructed as those forms were higher in the centre and so would be more visible from the adjacent property;
- A site visit had not been carried out at the Complainants' mother's property as part of the Officer's assessment of the application. It was not likely that had a site visit been conducted that the application for the extension would have been refused as it was acceptable in planning policy terms;
- The extension had been constructed on the north-west elevation of the applicant's dwelling, the sitting room of the Complainants' mother's property was orientated to the west-south-west. The impact on the residential amenity of the neighbouring property had been considered as part of the Officer's assessment, but was not deemed adverse. It was noted that pictures 1 and 2 of the Complainants' submission which showed the view from the sitting room before and after the extension had been constructed were not taken from the same position;
- The Complainants request for the pictures taken by the Planning Officer during his site visit had been declined on the grounds of privacy. The Development Manager showed one slide on screen and explained where others had been taken from during his site visit;
- Following notification of the complaint, the Planning Officer had visited the Complainants' mother, where he had discussed the matter with her.

Officers acknowledged and apologised for the lack of notification to the neighbouring property. Not all types of application required such consultation therefore, a lack of response had not automatically highlighted that it had not been dispatched. Even when applications were consulted on, they may not necessarily generate responses.

Further acknowledgement and an apology was given for the length of time taken to respond to correspondence from the Ward Member. The initial communication had been received around the time the first wave of restrictions relating to the Covid 19 pandemic had been implemented. At that time Officers were transitioning from paper based office working to paperless working from home and the item had been overlooked.

The Development Manager and the Planning Officer left the meeting at 4:03pm.

On the matter of the Stage 2 Corporate Complaint response not fully addressing the issues raised by the Complainants, the Corporate Director responded that Officers aimed to be clear in their communications, issues raised at Stage 2 may have been addressed as part of the initial complaint and during Stage 1. It was acknowledged that this response was not up to the usual standard and the importance of clear language in public communications was recognised.

In terms of preventing a similar issue arising in the future, the Corporate Director explained that the Development Manager had circulated a guidance note to support staff reminding them of the protocols to be followed when dealing with an application. Furthermore, the Development Management Service was trialling new software for case management.

The Corporate Director of Economic Development left the meeting at 4:13pm.

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

RESOLVED – 1) That the complaint against Development Management Services be upheld in part.

Members agreed that:

1. Officers had failed to dispatch notification to the Complainants' mother of the planning application which had prevented her from making representations;
2. The Planning Officer had not responded in a timely manner to correspondence from the Ward Member;
3. The Stage 2 Corporate Complaint response had not sufficiently responded to the issues raised by the Complainants.

(The meeting closed at 4:23pm)