

APPEALS PANEL 1

TUESDAY 5 SEPTEMBER 2017 AT 10.08AM

PRESENT: Councillors Earp (Chairman), Mrs Coleman (as substitute for Councillor Burns) and Paton.

OFFICERS: Corporate Director of Economic Development
Development Manager
Planning Officer

ALSO

PRESENT: Appellants x 3
Appellant representative

AP1.6/17 APOLOGIES FOR ABSENCE

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

AP1.7/17 DECLARATIONS OF INTEREST

In accordance with the Council's Code of Conduct the following declarations of interest were submitted:

Councillor Earp declared an interest in respect of his membership of the Development Control Committee.

Councillor Paton declared an interest in respect of his membership of the Development Control Committee.

AP1.8/17 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.

AP1.9/17 APPEAL - DEVELOPMENT SERVICES

Consideration was given to an appeal against Development Services.

The Chairman introduced the Panel and outlined the procedure to be followed. He gave an assurance that the hearing would be conducted fairly and that all parties would be afforded the time necessary to put their case, following which the Panel would reach a decision.

It was noted that all those present had seen the relevant documentation, copies of which had been circulated.

The Chairman asked the Appellants to summarise the reason for their appeal.

The complaint pertained to the granting of Planning Permission, under Delegated Powers, for an extension at property X, which the Appellants contended had adversely impacted properties A and B.

The Appellants felt that the granting of the permission had been wrong and that a number of errors made in the decision making process had led to the development being permitted. The

Appellants asserted that approving the development contravened the Carlisle and District Local Plan 2015-30 in terms of unreasonable overlooking, dominance and impact on sun/daylight. The approval of the extension to the rear of property X had meant that property A was dominated by the physical mass of the structure and as a result received virtually no sunlight during the winter months. Property B was directly overlooked by an upstairs window of the extension.

The Appellants detailed the errors they considered the Planning Officer had made in her determination of the application as follows:

- Underestimation of the impact the extension was to have on property A;
- The nature and reasons for the planting along the boundary between property A and property X;
- The overlooking of property B which had been compounded by the Planning Officer's errors in geographical orientation of the site and the surrounding area.

The Appellants felt that the Planning Officer had been dismissive of the issues they had raised with her, and that she had not fully taken them into account when assessing the application.

The Appellants asserted that the Development Manager had indicated to them that, had the mistakes not occurred, then Planning Permission would not have been granted. It was the Appellants' view that those errors had not been given due consideration by the Corporate Director of Economic Development and the Chief Executive in their handling of the complaint.

The constructed extension at property X had not been built in accordance with the approved plans, the Appellants had understood that the extension was to be a subsidiary structure to the existing dwelling. However, when viewed from ground level at property A, the ridge line of the extension's roof appeared to be in line with that of the main dwelling. The Appellants therefore considered that they had been misled by the Planning Officer and the Development Manager regarding the scale of the proposal. Furthermore, the Planning Officer and Development Manager had continued to make inaccurate references to the dimensions of the extension in their correspondence with the Appellants.

The Planning Officer's report had indicated that no pre-application advice had been given prior to the determination of the application. The Appellants asserted that a relation of the applicant had told them that the planning department had stated that they were on-board with the plans, and that construction of the chimney could begin without planning permission.

The Appellants felt that the Council's appointment of an independent surveyor had been intrusive to them and that they had been misled regarding the purpose of the commission. The Appellants had understood that the surveyor had been instructed to determine the impact of the extension on properties A and B and the lives of the Appellants, not the financial value of properties A and B. The Appellant's asserted that the independent surveyor had told them that his brief did not include an assessment of the size of the extension nor did it comprise a site visit to property B.

Communication with the relevant Officers at the Council had not been of a standard the Appellants had anticipated or considered acceptable. They outlined a number of occasions when phone calls made to the planning department were not returned and that responses to written communications had often taken months to be received.

In addition to poor communication, the Appellants considered that they had been provided with inaccurate information from the Development Manager regarding the processes for complaining about the granting of planning permission. The Appellants stated that the Development

Manager had advised that the Council would report itself to the Local Government Ombudsman for investigation, and that he had not advised them of the Council's own internal complaints process.

With reference to Appendix 9 of the report to the Panel, the Appellants noted the Development Manager had stated that the overlooking of property B was not in accordance with the Council's planning policies which sought to protect residential amenity and that further measures to reduce the potential impact were being explored. The first floor window of the extension, which overlooked property B had been glazed with frosted glass, however, the use of frosted or opaque glass had not been conditioned as part of the permission. Therefore, the Appellants were concerned that future occupiers would be able to install clear glass, thereby allowing an unrestricted view into windows at property B.

In summary, the Appellants considered that the service provided by the planning department had been extremely poor and that Officers should have acted more quickly to address their concerns. The consideration to the complaint by Officers in the latter stages of the complaints process had not given due weight to the concerns they had originally outlined.

In response to questions from Members, the Appellants confirmed that:

- The original dwelling (property X) was six metres in depth, and the extension was four metres in depth;
- The Development Manager had undertaken one site visit to properties A and B, and that he may have visited property X separately;
- Neither the Corporate Director of Economic Development nor the Chief Executive had undertaken a site visit;
- An objection to the proposed extension had not been received from the property to the rear of property X as the two households were known to each other;
- The planting along the boundary between property A and property X had been installed to minimise the appearance of the shed in the garden of property X. Due to the staggered layout of the properties, the planting also served to break up the view of the side wall of property X from property A;
- They believed that a third household had objected to the application, and therefore the application should have been presented to the Council's Development Control Committee for it to determine;
- The Appellants detailed a number of issues which had arisen during the construction of the extension including: hours during which building work took place; behaviour of the builders and; the removal of parts of the Leylandii hedge along the boundary between property B and property X which meant that the garden of property B was accessible from an adjacent street;
- They had not reported issues relating to smoke from the chimney at property X to the Council's Environmental Services;
- There was no comparable extension to an existing dwelling in the wider residential area of the site.

The Chairman asked the Appellants what they would consider to be an appropriate outcome to the Panel's hearing of the complaint.

The Appellants stated that they were not aware of what action was able to be taken, and that they considered the outcome of the hearing to be a matter for the Panel to determine.

The Chairman summed up the Appellants' complaint as follows: errors had been made in the determining of the application which had led to the issuing of permission and that the Appellants' concerns regarding scale and overlooking had not been fully considered; the

manner of the Planning Officer; poor communication from Council Officers and; the purpose of appointing the independent surveyor.

The Appellants confirmed the Chairman's summary

The Chairman thanked the Appellants for their input and advised that they would be informed by letter within 10 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 meeting at 10:53am.

The Planning Officer was invited to attend the meeting.

The Chairman summarised the Appellants' complaint and invited the Officer to respond to the issues raised.

The Chairman asked how many visits the Planning Officer had undertaken to the application site with the agent and the applicant.

The Planning Officer advised that she had visited the application site twice, she had not been able to gain access to the site on her first visit, but had undertaken the second visit on 15 March 2016. The site visit was part of the regular activities for assessing applications, the agent had not attended either site visit and, the Planning Officer noted it was not regular practise for them to do so. She added that when undertaking the site visit to property X she had been able to clearly see into the gardens of properties A and B, therefore she considered site visits to those properties were unnecessary as she had been able to assess the impact of the proposal from the application site.

The Planning Officer informed Members that site visits were undertaken by a Planning Officer to assess the application area, following which full consideration of all the issues, including objectors' comments was carried out at the office. Applications were determined on the Officer's evaluation of the full range of issues pertaining to the application.

In response to a request for clarification as to how incorrect compass point references had been contained in the Officer's report, the Planning Officer apologised and explained that this had been due to a typographical error. She stressed that her assessment of the site, and subsequent consideration and determination of the application had been conducted appropriately and that she was aware of the impact of the proposed development on property B.

In relation to the overlooking of property B, the Planning Officer explained that due to the oblique angle between the second floor window in the extension and the window in property B, the Supplementary Planning Document did not require frosted glass to be conditioned. The distance between the two windows was 12m, and the overlooked window in property B was a bedroom window, which was not classed as a primary room due to there generally being used less than rooms in the living areas of a dwelling.

Regarding the scale of the development, the Planning Officer stated that she had not visited the site following the completion of the extension, she noted that had the proposed extension been one metre less in distance its erection would have been allowed as part of the property owner's Permitted Development Rights and planning permission would not have been required. Given the level of development allowable under Permitted Development Rights, the Planning Officer did not consider refusal of the application to extend property X was warranted.

The issues raised by the Appellants regarding hedges was a boundary dispute that needed to be addressed through civil legislation rather than planning.

In relation to the Appellants' comments regarding her manner, the Planning Officer expressed disappointment, she explained that when dealing with applicants and objectors to householder planning applications she aimed to be personable and professional in her communications.

The Planning Officer left the meeting at 11:28am.

The Development Manager was invited to attend the meeting.

The Chairman summarised the Appellants' complaint and invited the Officer to respond to the issues raised.

The Development Manager explained that delays in responding to correspondence had resulted from the high load of casework Officers within the department, including himself were dealing with. An aspect of work of both the Planning Officer and Development Manager was the regular undertaking of site visits throughout the district, during such times Officers were not in the office and able to respond to written and telephone communications.

With regard to the Appellants' comments in relation to the manner of the Planning Officer, the Development Manager stated that he did not recognise the description of the Officer. He added that Planning Officers routinely liaised with applicants, agents and objectors as part of their role and therefore understood how to communicate appropriately with those groups.

In terms of his own visits to the application site, the Development Manager advised that he had visited the gardens of properties A and B once, and the street on which the properties were located a couple of times, for the purposes of assessing the impact of the extension from the street. The Development Manager informed Members that on his initial meeting with the Appellants, which had occurred on site, he had advised that Planning Officers did not routinely seek to view application sites from the dwellings of objectors, particularly when an objector's property was able to be viewed from an application site.

Regarding the scale of the development, the Development Manager acknowledged that the extension was large in size, and noted that had the development been for a single storey dwelling, the concerns set out by the Appellants may not have been raised. He noted, however, that Permitted Development Rights would have enabled the applicant to erect a construction of similar scale at the site.

Considering the matter of the overlooking of property B, the Development Manager noted that it had been possible for the Planning Officer to condition, as part of the consent, the use of frosted glass in the second floor window. The Planning Officer had not imposed this condition as she had evaluated the window of property B to be at an oblique angle from the one proposed in property X, and that there was sufficient distance between the two dwellings to prevent the overlooking of property B. The Development Manager indicated that the issue was a matter for debate in that the Planning Officer may have imposed such a condition, however, this would have been open to challenge by the applicant.

In response to a question from a Member, the Development Manager confirmed that it was not possible for the Council to retrospectively add conditions to an issued Notice of Approval.

Responding to a comment from a Member that the chimney had not been built as per the approved plans, the Development Manager confirmed that the construction was not in accordance with the approved documents. However, whilst the construction was not as had

been approved, in planning terms it was considered to be a non-material amendment, which was easily addressed by the applicant with a further submission to the Local Planning Authority.

The Development Manager confirmed that the three properties were in a “Smoke Controlled Area” and advised that complaints relating to smoke from the chimney of property X was a matter to be addressed by the Council’s Environmental Health Services, and was not a planning matter.

The Chairman asked what remit the Council had given to the independent surveyor they had employed.

The Development Manager explained that the independent surveyor had been instructed to consider the impact on properties A and B of a two-storey extension over a one storey extension at property X. In order to make the conclusion of the evaluation quantifiable, the surveyor’s report had considered the impact to properties A and B in monetary terms.

A Member noted that in correspondence with the Appellants, the Development Manager had referred to a mistake made by the Planning Officer, he sought further detail on what mistakes had been made.

The Development Manager responded that the reference was to the Officer’s incorrect description of compass point directions contained in the report. Furthermore, in assessing the report, it had been apparent that whilst the Planning Officer had clearly given due weight and consideration to the issues raised by the Appellants, these had not been clearly delineated within the report. The Development Manager informed Members that Officers had now changed their reporting style to make clearer reference to the issues raised by objectors and their responses.

Responding to a question from a Member regarding the number of objections received in relation to the application, the Development Manager indicated that he was only aware of two objections having been submitted.

Regarding the length of time taken to process the complaint, a Member asked if it was possible to delegate the duty to respond to complaints.

The Development Manager explained that he and his deputy, the Principal Planning Officer were able to deal with complaints received, however, due to his delegation of application processing, the Development Manager assumed responsibility for addressing complaints. In the first instance, attempts were made to address complaints in an informal manner, in the event that this was not possible the issue was then formally raised as a Corporate Complaint. He acknowledged that in respect to the Appellant’s complaint, it was possible for it to have been escalated to being a Corporate Complaint earlier than it had been.

In relation to the Appellant’s comments regarding the advice they had received about how to progress their complaint, the Development Manager explained that he was fully aware of the Council’s Corporate Complaint’s Procedure and was therefore able to correctly advise complainants on the appropriate methods of escalating their complaint.

In terms of addressing complaints, Officers within the Planning Department now used electronic diaries to manage the timely issuing of correspondence when complaints were being addressed at an informal stage. The Council’s Corporate Complaints Team managed deadlines for responses when complaints were escalated to a formal footing.

Responding to a question from a Member regarding the setting out of information for complainants of routes to address complaints and likely outcomes, the Development Manager advised that the information was not contained within a single document. The Council made its Corporate Complaints Policy publicly available, however, information relating to matters such as the overturning of a planning decision were set out in government statute.

A Member commented that a letter of apology to the Appellants regarding the processing of their complaint may be appropriate.

The Development Manager indicated that he was willing to issue an apology.

The Development Manager left the meeting at 12:02pm

The Corporate Director of Economic Development was invited to attend the meeting.

The Chairman summarised the Appellants' complaint and invited the Corporate Director of Economic Development to respond to the issues raised.

With reference to a letter of 23 January 2017 to the Appellants residing in property A, the Chairman noted the Corporate Director had stated that a separate response was to be sent to the Appellant resident at property B, he sought confirmation as to when the further letter was sent.

The Corporate Director confirmed that a further letter to property B had not been sent until 24 February 2017, she apologised for the delay in dispatching the communication.

The Corporate Director outlined a number of process improvements which had recently been implemented in the planning department including; the updating of the planning pages on the Council's website to give greater clarity about the service; a requirement for Officers to undertake Continuing Professional Development and; a number of actions relating to performance management and prioritisation.

The Chairman stated that he considered the Appellant's felt let down by the service that had been received and that it was important that this was recognised.

The Corporate Director stated that she was happy to issue an apology from the department in respect of the service the Appellants had received, and outlining the measures implemented to improve customer services.

The Corporate Director of Economic Development left the meeting at 12:18pm

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

RESOLVED:

The Panel in part dismissed and in part upheld the complaint on the basis that:

(1) That the planning application had been properly determined in accordance with relevant guidelines and legislation.

(2) The Panel considered that there had been errors and delays in the processing of correspondence relating to the complaint. They recognised that new processes had now been implemented to improve complaint handling in the planning department. However, given the

handling of the complaint the Panel considered it was appropriate for the Chief Executive to send a letter of apology on behalf of the Council to all parties.

(3) The Panel felt that the Corporate Complaints Policy should be updated to include the procedure for complaints.

(The meeting ended at 12:30pm)