

APPEALS AND ENFORCEMENT SECTION - MONTHLY REPORT

OCTOBER 2003

PART 1 - PLANNING APPEALS RECEIVED FROM THE PLANNING INSPECTORATE

WRITTEN REPRESENTATIONS

6 Elmdene Close, Shrewley – Erection of single storey extension to garage to provide store and first floor side extension.

38 High Street, Kenilworth – Erection of a detached carport and garden store.

HEARING

Land rear of 5/5A Upper Rosemary Hill, Kenilworth – Erection of a dwelling and double garage (W20030655)

PUBLIC INQUIRY

2 Gerrard Street, Warwick – Erection of 2, two and a half storey dwellings after demolition of existing workshop.

PART 2 - PLANNING APPEAL DECISIONS

COMMERCIAL STORAGE AND RESIDENTIAL AMENITY – RELEVANCE OF 45 DEGREE GUIDELINE SPG

1. **Erection of a canopy with supporting structure to form storage area to existing premises, 'Pets and Plants', 44 Rugby Road, Cubbington (W20021720)**
 - Committee Decision 27 January 2003 (contrary to officers recommendation)
 - Overbearing effect upon neighbouring residential property – contrary to WDLP Policy (DW) ENV3 (Development principles)
 - Hearing 2 September 2003
 - Appeal DISMISSED 12 September 2003

The inspector noted that the site is within a local shopping centre as defined by (DW) Policy S7). He noted that the Council had adopted '*The 45 degree Guideline*' as Supplementary Planning Guidance (SPG) after public consultation. He disagreed with the appellant's argument that the SPG should not be relied upon because the window most effected is not the one nearest the site and agreed with the Council that the SPG does not limit its application to nearest windows only. Therefore he gave substantial weight to the SPG in assessing the proposal.

Main Issue: He considered the main issue to be the effect of the proposal on the living conditions of nearby occupiers having particular regard to the loss of outlook. He noted that the proposed canopy would breach the 45 degree rule, notwithstanding that the intersection of the line with the extension would be 14 metres away from the patio doors at no. 46, and that the almost the entire length of the building would be easily seen from the patio doors and patio. Also he considered that the combination of height and length of the proposed canopy, set within a higher level garden and its close proximity to the common boundary would make it visually dominant when seen from no. 44 and its well tended garden. Also, notwithstanding the absence of objections from the occupiers of no. 42, a hot food takeaway with flat above and rear garden, he considered the proposed canopy that would be built along the common boundary with no. 44 would be visually dominant. Therefore he concluded that "*it would*

result in material harm resulting in loss of outlook caused by the dominance of the proposal', and 'would be contrary to (DW) Policy ENV3 of the Local Plan and SPG'.

Other matters: In respect of light whilst he thought that due to its size and proximity to the adjoining garden land at No's 42 & 46 would cast additional shadows over those properties he considered there was a lack of clear evidence to come to any conclusion. Regarding the use of the proposed extension given the stated intention of the appellant that it would only be used for ancillary storage rather than the keeping and breeding of animals with an appropriate condition it would be acceptable. Also, the lack of any current restrictions on the customers accessing the rear areas would mean the proposed development would not make any noise and disturbance any worse. Similarly, given the current storage use of much of the back garden and the absence of garden, the proposal would not deprive the property of amenity space for the residential occupiers of the flat above the shop. Finally he did not consider there was any evidence to suggest the proposal would lead to more deliveries and increased congestion or a reduction in highway safety.

Whilst he found that some of these other matters did not weigh against the proposal they were insufficient to counterbalance the material harm identified under the main issue.

COMMENTS

The argument, supported by officers, that the erection of a canopy to cover the existing 'hotch-potch' of small outbuildings and open storage in the rear curtilage was legitimate, particularly in respect of the outlook from first floor windows. However, the Inspector clearly agreed with the main thrust of the case put forward on behalf of the Council that the combination of height and length of the proposed canopy and its proximity from side boundaries would cause unacceptable harm to the outlook of the adjoining buildings and garden areas. The case was also of note because it clarifies that the 45 degree rule can be applied to all windows not just nearest windows. Also, it emphasises that 'outlook' from both buildings and garden areas can be a fundamental material consideration in assessing proposed developments, something that is a rather subjective assessment that is in the eye of the decision maker.

RESIDENTIAL EXTENSION – LIKELY IMPACT UPON FUTURE LIVING CONDITIONS FOR OCCUPIERS

2. Erection of a two storey rear extension and conversion of dwelling to a house in multiple occupation, 7 Tachbrook Road, Leamington Spa (W20030142)

- Committee Decision 2 April 2003
- Detrimental to the amenity of the future occupiers of the property and the neighbouring residents, contrary to local plan policy (DW) ENV3.
- Appeal DISMISSED 17 September 2003

The issues which were considered relevant were all associated with the living conditions of prospective occupiers, and related to amenity space, visual impact, sunlight and daylight. The impact of the extension upon those living nearby was identified as being associated with visual impact, sunlight, daylight, noise and disturbance.

The Inspector stated that the WDC SPG guidance 45 Degree Guideline was to be given "substantial weight" as a material consideration to the appeal. Reference was also made to the advice contained in PPG3 Housing with regard to encouraging the provision of housing for specific groups including students and young people (Para 11 and 13), but also to PPG3 para 54 and 56 where it states that the efficient use of land should be achieved by good design and layout and without compromising the quality of the environment.

Amenity Space – The open rear yard area to be retained if the extension was allowed was considered to be inadequate to meet basic needs and would cause unacceptable living conditions.

Internal environment – The Inspector considered that the extension would appear long, high and overbearing and would reduce the amount of daylight into an existing bedroom. It would also contravene the 45 degree guideline. It was considered that the size of the rooms created, although small, would provide acceptable living conditions. The conclusion reached was that the proposal would cause unacceptable harm to the living conditions of prospective occupiers and would be incompatible with local plan policy (DW) ENV3.

Living conditions – Nearby occupiers By reason of the length of the proposed extension by the neighbouring property at no.11 Tachbrook Road it was concluded that the scheme would have a material visual impact on the residents living in the adjacent bed-sits, and appear large and looming and would have a “hemming-in” effect.

With regard to no.5 Tachbrook Road the conclusion was also reached that the proposal was so high, so close as to have an overbearing and darkening impact on the rear yard area, and cause unacceptable harm to living conditions.

On the noise disturbance issue the Inspector considered that the development would neither exaggerate existing noise levels nor create unacceptable disturbance. There was also no objection to the design of the scheme.

COMMENT

The refusal was comprehensive in its reasons, all related to the issue of living conditions, and the Inspectorate has agreed with the majority of the Council’s concerns. The reference made to PPG3 is very relevant because there always needs to be a realistic balance between providing housing, and protecting the environment from development which is too intense and cramped.

RESIDENTIAL TWO STOREY SIDE EXTENSION – DISTANCE SEPARATION TO NEIGHBOURS

3. Erection of a two storey side extension after demolition of a car port, 12 Eborall Close, Warwick(W20021478)

- Committee Decision 11 December 2002(Part II item)(contrary to officers recommendation)
- Unneighbourly form of development, overbearing impact, contrary to local plan policy (DW)ENV3.
- Appeal ALLOWED 8 October 2003

The main issue was considered to be the effect of the extension upon the amenities of the neighbouring occupiers at no.14 Eborall Close.

The Inspector was of the opinion that the design of the extension when viewed from the road would be acceptable and that the only significant concern was the possibility of no.14 being dominated or suffering an unreasonable loss of outlook. He noted that WDC had adopted SPG guidance with regard to distance separation, but referred to the importance of taking into account site specific circumstances when reaching a decision.

The conclusion reached was that the proposal would not result in a significant loss of sunlight or of views of the skyline. Due to the presence of the neighbour’s garage the lower part of the extension would not be seen, and the extension would not dominate the patio or garden. It was acknowledged that the extension would be most noticeable from the neighbours annex, but the Inspector did not consider that it was a habitable room for the purposes of the SPG guidance, and was similar to a utility room or hallway which are excluded.

The Inspector in allowing the extension commented; “... *The factors are finely balanced in this instance and I have considered then carefully. My conclusion is that the extension would not have an impact that would be serious enough to warrant withholding planning permission.*”

COMMENT

The decision shows that there can be certain circumstances where factors are finely balanced and are not clear cut. The SPG guidance on distance separation is important and does provide a consistency in approach, but as highlighted by the Inspector the site specific factors also need to be taken into account to achieve a final judgement.

BUNGALOW IN REAR GARDEN – IMPACT ON CHARACTER OF THE AREA AND LIVING CONDITIONS OF ADJACENT PROPERTIES

4. Erection of a detached single storey dwelling with integral garage and erection of garage to existing dwelling, rear of 7 Coventry Road, Baginton (W20021514)

- Delegated Decision 14 March 2003
- Contrary to rural housing policy – SPG on limited infill villages, detrimental to amenities of neighbouring residents by reason of noise, disturbance, visual impact, loss of garden, contrary to WDLP Policy (DW) ENV3.
- Appeal DISMISSED 10 October 2003

The Inspector only afforded limited weight to the SPG on limited infill villages because it has not been the subject of public consultation. The Inspector noted that Structure Plan policy directs most new development into the main urban areas but does preclude new rural house.

The Inspector considered that the main issues in this appeal were: (i) whether the proposed scheme would be an appropriate form of development in the village taking into account the character, scale and environment of the settlement; and (ii) the effect on the living conditions of the surrounding residents, having particular regard to noise, disturbance, overlooking and privacy.

Effect on the character of the area

The Inspector noted that some of the housing in the immediate vicinity of the appeal site was laid out informally, not necessarily following the alignment of the roads they front. However, he observed that there were no other properties set so far behind the frontage as proposed in this case. He also observed that the garden area for the existing and the proposed dwellings would be somewhat smaller than others along the Coventry Road frontage, although this was a less significant objection. He judged that the proposed scheme would be notably different from the surrounding development.

The Inspector agreed that the well-established trees on the appeal site would significantly over-shadow the rear garden of the proposed dwelling and that several of these trees would need to be felled to ensure an adequate standard of daylight and sunlight. He considered that the loss of these trees would further erode the character of the area. He concluded that the scheme would be out of keeping with the established pattern of development in the village, thereby detracting from its current character, scale and environment.

Effect on the living conditions of surrounding residents

On the second issue, the Inspector concluded that, although the level of harm to each neighbouring property may be limited, cumulatively it would add up to an unacceptable impact on the living conditions of surrounding residents. The proposed access would pass between Nos. 7 and 8 Coventry Road. The Inspector agreed that the passage of vehicles and visitors so close to both properties would be a source of some disturbance. He considered that the presence of a long blank elevation within 2 metres of the

common boundary with 6 Coventry Road would create an uncomfortably oppressive and enclosing effect on the garden of that property, despite the softening impact of an existing hedge. He further considered that the impact on No. 6 would be exacerbated by the difference in levels which would place the new bungalow on higher ground.

The Inspector noted that the new bungalow would represent an intensification of development in the area and that, albeit to a limited degree, the activity associated with the new property would give rise to some additional disturbance to occupants of all neighbouring houses.

COMMENTS

Backland development such as this proposal can have a significant impact upon the character of an area. It is notable in this case that the Inspector drew a distinction between the appeal proposal and other dwellings that have previously been erected within gardens in the immediate vicinity. In this case the proposed dwelling would have been situated directly behind the existing dwelling, a considerable distance back from the road frontage. Other similar developments in the surrounding area have generally been erected to the side of established dwellings and not so far back into the site.

RESIDENTIAL TWO STOREY SIDE EXTENSION – EFFECT ON OUTLOOK FROM NEIGHBOURING GARDEN

5. Enlargement of bungalow to two storey dwelling, 112 Leicester Lane, Cubbington (W20021806)

- Committee Decision 17 February 2003 (contrary to officers recommendation)
- Un-neighbourly form of development, overbearing effect upon no.114, contrary to WDLP Policy (DW) ENV3 (Development principles)
- Appeal DISMISSED 14 October 2003

The Inspector considered that there were two main issues. The first was the effect of the development on the living conditions of the residents of no. 114 Leicester Lane, particularly outlook and sunlight. The second was its impact on the character and appearance of the street scene.

Living conditions:- He considered it would *“substantially increase the bulk and scale of the appeal property, and this would be emphasized by the height of walls that would be within the corner set back. Given how close the extension would be to the boundary when viewed from the rear garden of no. 114 I consider it would prove unacceptably overbearing and dominant. The effect of this would be to make this neighbouring rear garden a less pleasant place for the occupiers to use, thereby detracting unreasonably from their enjoyment of the property”*. However given the orientation of the properties and the height of the extension he did not consider it would remove an unacceptable amount of sunlight from the rear of no. 114. Overall he considered it would cause material harm to living conditions of the residents of no. 114 thereby conflicting with WDLP Policy (DW) ENV3.

Character and Appearance: It was argued on behalf of the Council that dominant extension also unacceptably harmed the character and appearance of the area and the Inspector accepted that it was also a main issue that needed to be considered. However, given the mix of individually designed 2 storey and single storey properties fronting this part of Leicester Lane, and taking account of its distance from the carriageway and the screening effect of established trees in the wide grass verge, he considered that the scale and design of the development would not appear jarring or discordant in this location. He considered that the spaces between and around houses was only part of the ‘soft’ edge to the urban area and that it would remain soft by virtue of the wide verge and mature landscaping.

Conclusions: Notwithstanding his conclusions on character and appearance he concluded that the harm to the outlook of the neighbour’s property *“provides a compelling reason why planning permission should not be granted”*.

COMMENT:

This is another case which turned on the subjective issue of outlook, notably mainly from a garden, rather than the house. It indicates that, in assessing planning applications, the Council need to increase the weight given to this issue, particularly when dealing with extensions such as this where the proposed volume of the house would be greatly increased creating an overly dominant impression on smaller neighbouring properties. Also it indicates that cosmetic measures such as cutting the corner off are often not sufficient to ameliorate effect on living conditions of overly dominant extensions.

RESIDENTIAL FRONT EXTENSIONS – EFFECT ON CHARACTER/APPEARANCE & LIVING CONDITIONS

6. Erection of a 2 storey front extension and garage extension with balcony above, 16 Vine Lane, Warwick (W20030343)

- Delegated Decision 28 April 2003
- Extension out of character of the area, unneighbourly form of development, loss of light, contrary to WDLP Policy (DW) ENV3 (Development principles)
- Appeal DISMISSED 20 October 2003

The appellant submitted amended plans for a substantial reduction in the scale of the extension after the Council made its decision. Since all interested parties did not have an opportunity to comment on the revised drawings the Inspector based his decision on the drawings showing the deeper extension. He considered that the main issues were the effect of the proposal on the appearance of the area having particularly its design and layout and its effect on the living conditions of residents at no. 18 Vine Lane.

Character/Appearance: He considered, by virtue of the considerable depth and bulk of the proposal, notwithstanding the fact that, from the west, the extension would be seen against the backdrop of the side gable of no. 14 Vine Lane, that it would introduce an incongruent element in the street scene. Also, he said *“the terraced balcony over the garage would represent an alien feature in the street scene which would appear wholly out of character in this area. Furthermore, the addition of such a bulky extension would unbalance the visual appearance of this pair of semi detached houses”*. Therefore he concluded the design and layout would not harmonise with its surroundings and harm the appearance of the street scene thereby conflicting with WDLP Policy (DW) ENV3.

Living conditions of occupants of No. 18 Vine Lane: He noted that there was no dispute that the proposal would breach the Council's 45 degree SPG and that the blank two storey side wall of the extension would be positioned less than 1 metre from a first floor bedroom window on the front elevation of no. 18. Since the extension would be to the east of the south-east facing bedroom window it would result in an unacceptable loss of daylight and sunlight for the occupiers of no. 18. Therefore it would harm their living conditions and conflict with the Council's SPG.

Other issues: He did not agree with the appellant's contention that the proposal is similar to attached front garages to the front of the three terraced houses to the east of no. 16, and he noted that they do not have balconies on their roofs.

COMMENT:

The Inspector resoundingly endorsed the Council's decision for what he agreed was a proposal wholly out of character with the area. It confirms that applicants have little hope in gaining approval for large front extensions particularly to semi detached properties. Also, it confirms the importance of the 45 degree rule.

PART 3 - APPEAL PERFORMANCE: YEAR April 2003 - March 2004

Total number of Planning decisions (incl adverts)	= 35	
Dismissed	= 30	(86%)
Allowed	= 5	(14%)

FORTHCOMING HEARINGS & PUBLIC INQUIRIES

HEARING

9 Dec Erection of 4 dwellings and garages after demolition of workshops; The Forge, Hatton Green, Warwick (W20030346)

YEAR 2004

PUBLIC INQUIRY

27&28 Erection of 11 dwellings and construction of new vehicular access; Kingswood Nurseries, Old Jan Warwick Road, Lapworth (W20021601)

HEARING

2 Mar Erection of first floor and 2 storey side and front extension; 53 Arras Boulevard, Hampton Magna, Budbrooke.

HEARING

9 Mar Erection of new dwelling and garage after demolition of existing house, 3 car garage with flat above stables; Eastfield, Old Warwick Road, Rowington.