



Development Control Committee - 20 October 2010

Appeal Decisions Monitoring Report

Summary

Update on appeals decided by the Planning Inspectorate and an analysis of the main issues to monitor consistency between the Council's and Planning Inspectorate's decisions.

Attachment(s)

Appeal Decisions 23 August to 1 October 2010

1.0 Introduction

1.1 This report advises on the outcome of planning appeals determined by the Planning Inspectorate from 23 August to 1 October 2010 and analyses the decisions made by the Development Control Committee and Officers under Delegated Authority.

1.2 Details of costs awarded against the Council (if any) are also given.

2.0 Recommendation

2.1 That the report be noted.

Implications:		
Corporate Outcomes or Other Policy/Priority/Strategy		
Good Quality of Life	<input type="checkbox"/> Good Reputation	<input checked="" type="checkbox"/>
Good Value for Money	<input type="checkbox"/> High Quality Service Delivery	<input type="checkbox"/>
Effective Partnership Working	<input type="checkbox"/> Strong Community Leadership	<input checked="" type="checkbox"/>
Effective Management	<input checked="" type="checkbox"/> Knowledge of our Customers and Communities	<input type="checkbox"/>
Employees and Members with the Right Knowledge, Skills and Behaviours		<input checked="" type="checkbox"/>
Other:		
Decision(s) would be outside the budget or policy framework and require full Council approval		
Financial	There are no financial implications at this stage	<input checked="" type="checkbox"/>
	There will be financial implications – see paragraph	<input type="checkbox"/>
	There is provision within existing budget	<input type="checkbox"/>
	Decisions may give rise to additional expenditure at a later date	<input type="checkbox"/>
	Decisions may have potential for income generation	<input type="checkbox"/>
Risk Management	An assessment has been carried out and there are no material risks	<input checked="" type="checkbox"/>
	Material risks exist and these are recorded at Risk Register Reference - inherent risk score - residual risk score -	<input type="checkbox"/>
Staff	There are no additional staffing implications	<input checked="" type="checkbox"/>
	Additional staff will be required – see paragraph	<input type="checkbox"/>
Equalities and Human Rights	There will be no impact on equality (race, age, gender, disability, religion/belief, sexual orientation) or human rights implications	<input checked="" type="checkbox"/>
	There will be an impact on equality (see categories above) or human rights implications – see paragraph	<input type="checkbox"/>
Legal	Power: Planning and Compulsory Purchase Act 2004	
	Other considerations:	

Background Papers:					
Person Originating Report:		Sue Wheatley - Development Control Manager 01832 742227 sjwheatley@east-northamptonshire.gov.uk			
Date: 11 October 2010					
CFO		MO		CX	

(Committee Report Normal Rev. 21)

East Northamptonshire Council

DC Appeal Results

From 23 August to 1 October 2010

Officer

Case Ref. No.	Appellant	Location	Appeal Type	Date Decided	Decision
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Procedure

Proposal

Anna Lee

Public Inquiry

08/01119/LD	Mr Clayford	Buildings OP0056 SP9871, Chelveston Road	Against Refusal	28/09/2010	Dismissed
Certificate of lawfulness for siting of a mobile home for residential use.					

- The Council refused to grant a lawful development certificate as the applicant failed to demonstrate on a balance of probability that the mobile home had been residentially occupied for a continuous period of ten years.
- The main considerations considered by the Inspector were, on a balance of probability, (1) whether the mobile home had been on the land, (2) whether residential occupation occurred and (3) whether the residential occupation had been continuous.
- The Inspector, took into consideration the various documentary and witness evidence, and came to the conclusion that the mobile home was brought onto the land in 1996 and has been positioned on the land since 2002.
- In terms of the use of the mobile home, the Inspector took into account relevant case law which advises that any significant interruption in the continuity of an unauthorised use means that the particular breach is at an end, and, when the use recommences, the ten year period (in the case of this appeal) must start again. Therefore, the applicant must prove, on the balance of probability that not only residential occupation took place, but this had been continuous such that the Local Planning Authority (LPA) could have taken enforcement action against it at any point during the relevant ten year period.
- The occupant of the mobile home (DM) died in October 2009, and as such, he was unable to provide evidence which could be tested as to the nature of his occupation of the site and, in particular, the degree to which any residential occupation of the site was continuous.
- A number of witnesses gave evidence at the inquiry and the Inspector considered the evidence provided by each witness.
- The Inspector came to the opinion that there is sufficient evidence to indicate that DM was living in the mobile home at the site for at least some of the time from 1996, but the main question is whether the use was of a continuous nature.
- Whilst a number of witnesses accepted that there were times when the site could have been occupied, the Inspector noted that some local resident witnesses noticed nothing in the way of residential occupation and this evidence casts doubt on the continuity of residential occupation at the site. As the Inspector comments: "this is also relevant in that, however low profile DM's occupation was, a continuous occupation would by its nature be more likely to be noticed than a sporadic one."
- Separate visits were made by the Council's Environmental Protection Officers to the site in September 2002 and in July 2005. Both Officers gave evidence at the Inquiry.
- In 2002, the Environmental Officer distinctly remembers the mobile home not being lived in as "all sorts of stuff just piled inside it" and from her discussion with DM, she gathered that DM no longer lived at the site but lived with his sister due to his ill health.
- The Appellant and DM's brother suggested that it was possible that DM was in hospital for a week and then spent another week recuperating with his sister.
- On this matter, the Inspector commented that: "If this could be shown to be the only break in occupation throughout the ten year period then I would be inclined to disregard it; however, that cannot be demonstrated."
- The Council's Environmental Protection Officer attended the site in 2005 following a fire at the site. Photos were taken of the site and these photos show large amount of debris, including doors, piled up against the mobile home, making access and egress impossible. In addition, the Environmental Protection Officer met with DM on that occasion and her notes indicates that DM had claimed that he had "no fixed abode" and travelled around. The Inspector comments: "This seems to me consistent with his uncertainty as to whether drug addicts, whom he told Mrs Pell he believed to have been living in one of the caravans, had vacated the site".
- The site was sold by DM to the appellant in 2002. The Inspector commented that "The purchase price from the site of £19,800, apparently paid in stages by the appellant to DM, may have allowed DM to purchase a motor-home of some sort, for there was also a suggestion that some point DM was spending time away from the site, travelling around."
- The Inspector took into account the documentary evidence, including the rather comprehensive Council Tax details provided by the appellant. The Inspector noted that for the years from 2005 to 2009, the amount of Council Tax was nil and the first Council Tax payment was made in December 2002. The Inspector considered that the documentary evidence in the form of personal letters such as utility bills, medical letters, personal

invoices, bank statements etc were scarce. In addition, the Inspector noted that no letters were sent to DM at the Dixie before 2002, "and only sporadic correspondence thereafter, not all of which necessarily related to a residential use at the site."

- The Appellant submitted water bills and photographs in support of the appeal. However, the Inspector commented that these bills were stated "Trough" and "Woodyard" and are not necessarily related to any residential use of the site. In addition, the photos showing a water tap obscured by hedging and overgrown vegetation, and the light fitting partly covered by moss are also consistent with a site not in continuous residential use, although these photos were taken in December 2008 - on a date after the end of the relevant ten year period.
- The Inspector finally commented: "Perhaps the final mystery in DM's life is contained in the Death Certificate, which postdates the application but is of interest not only showing that DM's place of death was at No.44 Brook Street, Raunds, but also that the informant to the authorities was his sister, which might again suggest that family relations were not as discordant as perhaps they once were."
- During the Inquiry, it was suggested that following DM's eviction from his mother's home in 1996, he had no place to live other than the mobile home and was not known to have lived anywhere else. The appellant also suggested that DM may have been living at the site, but giving the impression that the site was not at the time residentially occupied, so that the LPA could not have taken enforcement action.
- On these matters, the Inspector commented that it is not for the LPA to prove that he was living away from the site; rather, it is for the appellant to prove, on a balance of probability, not only that he lived at the site but such occupation was of a continuous nature. The Inspector's view is that the Appellant had not provided substantive evidence to demonstrate that the site was continuously occupied.
- Overall, the Inspector concludes that the Council's refusal to grant a certificate of lawful use was well-founded and dismissed the appeal.

Written Representations

09/01014/FUL Mr D McAuley 17 Chancery Lane, Thrapston
Five unit residential development within curtilage of 17 and 19

Non-determination
23/08/2010 **Dismissed**

- Planning permission was refused because of (1) cramped layout and unsatisfactory relationship with the site and existing residential properties along Chancery Lane, (2) the dwellings would be out of keeping with the surrounding character and style of development by reasons of scale, mass, building form, design and detailing, (3) the access would create an unsatisfactory relationship with the existing properties Nos. 17 and 19 Chancery Lane and would harm the residential amenities of the existing and future occupiers, due to the movement of vehicles entering and leaving the site, (4) for failing to demonstrate that there would be no other reasonably available sites outside the flood zone for development (the site lies in Flood Zone 2), and (5) for failing to assess the archaeological significance of the site.
- The Inspector agreed that the proximity of the houses to each other would give the development a cramped feeling and which would be accentuated by the scale of the buildings and the fact that most of the areas in front and between the properties would be given to parking and garages. He comments, "I appreciate that there is a significant fall in levels, the proposed dwelling would also have an uneasy relationship with the frontage property, and would appear to have been shoe horned onto the site".
- The Inspector took into account the sensitive location of the site, on the edge of the existing built form and surrounded by playing fields. In particular, he noted that there are clear views of the site from the playing fields and the dwellings in the surrounding area are significantly smaller than the dwellings proposed. The Appellant referred to the development being of local vernacular – specifically a country estate style. However, the Inspector felt that the proposed substantial family dwellings (some with double garages) did not reflect this approach.
- The Inspector noted that the residents of the new houses, visitors and service vehicles would pass very close to the main living areas of the frontage properties and consider that this could amount to significant traffic noise, "intruding into what is presently quite space between and behind the existing houses" and "similarly the quiet enjoyment of the front and rear gardens of the existing houses would be affected". "I appreciate that the current occupiers are in support of the proposal. However, I have to consider the living conditions of the future occupiers".
- The Appellant submitted a Sequential Test during the appeal and this test concludes that there are no sites more suitable for the development in the locality. The Inspector considered the key issue to be the extent of the search area and agreed with the Council that, at the very least, the appropriate area should be the whole of the Thrapston. The Appellant, however, applied a more restricted area. The Inspector took into account the Council's Housing Land Assessment which identifies a number of potential housing sites in Thrapston and noted that there are a number of potential allocated and windfall sites which fall within Flood Zone 1. The Inspector concluded that there is no sequential need for development on the appeal site in Flood Zone 2.
- In terms of archaeology, the Inspector took into account the guidance contained in PPS5 and agreed that a field evaluation should be provided. The Inspector was not convinced that this matter could be dealt with by a watching brief condition, as he cannot be certain how the archaeology potential may affect the design and layout, and this adds to his concerns about the proposal.
- The appeal was dismissed for the reasons given.

Mrs Diane Hall

Written Representations

09/01297/LB Mr T Redding Manor Farm House, Deene
Single storey rear side extension

Against Refusal
21/09/2010 **Dismissed**

- This application proposed the extension of an existing lean-to extension to the side of a grade II listed building. The existing extension and host building have Collyweston late roofs. The application proposed the use of natural blue slate. The application was refused because this material would fail to preserve the character and appearance and fabric of the listed building.
- The Inspector agreed with this view, commenting that the use of blue slate would be in marked contrast to the texture and brownish tones of the Collyweston Slate, which is the predominant roofing material of buildings in the Conservation Area. Although the Inspector accepted that stocks of Collyweston slate may be limited and this affects prices, he was not convinced that this justifies using a different material, particularly given that the proposed extension would be modest in scale. He was also of the view that although not visible from public view, the change in material would appear incongruous in the context of the overall colour, texture and roofing materials of the listed building itself, therefore materially affecting its external appearance and causing harm to its character and integrity.

Decided Appeals Dismissed:	3	100.00%
Decided Appeals Allowed:	0	0.00%
Decided Appeals Withdrawn:	0	0.00%
Decided Appeals Total:	3	100.00%

M Denotes Member
Decision against
Officer advice