

APPENDIX

Committee: PLANNING

Date Of Meeting: 18th August 2010

Title of Report: TOWN AND COUNTRY PLANNING ACT 1990 APPEALS

Report of: A Wallis Planning and Economic Regeneration Director
Case Officer: Telephone 0151 934 4616

This report contains	Yes	No
Confidential information		✓
Exempt information by virtue of paragraph(s) of Part 1 of Schedule 12A to the Local Government Act 1972		✓
Is the decision on this report DELEGATED?	✓	

Purpose of Report:

To advise Members of the current situation with regard to appeals. Attached is a list of new appeals, enforcement appeals, developments on existing appeals and copies of appeal decisions received from the Planning Inspectorate.

Recommendation(s):

That the contents of this report be noted.

Corporate Objective Monitoring

Corporate Objective	Impact		
	Positive	Neutral	Negative
1 Creating A Learning Community		✓	
2 Creating Safe Communities		✓	
3 Jobs & Prosperity		✓	
4 Improving Health & Well Being		✓	
5 Environmental Sustainability		✓	
6 Creating Inclusive Communities		✓	
7 Improving The Quality Of Council Services & Strengthening Local Democracy		✓	

Financial Implications

None.

Departments consulted in the preparation of this Report

None.

List of Background Papers relied upon in the preparation of this report

Correspondence received from the Planning Inspectorate.

Appeals Received and Decisions Made

From 08 July 2010 to 05 August 2010

Decisions

18 York Gardens, Birkdale

S/2009/0804 - APP/TPO/M3420/980

Tree Preservation Order Consent to fell one oak tree at the front of the dwellinghouse (lies within TPO No. 142, 35-39 York Road, Southport)

Appeal Type: Informal

Lodged Date: 28 January 2010

Decision: Dismissed

Decision Date: 21 July 2010

34 Roe Lane, Southport

S/2010/0223 - 2129251

Retrospective application for the erection of a front boundary fence to a maximum height of 2.08m

Appeal Type: Written

Lodged Date: 07 June 2010

Decision: Dismissed

Decision Date: 20 July 2010

40 Matlock Road, Birkdale

S/2010/0374 - 2129982

Erection of a first floor extension at the rear of the dwellinghouse

Appeal Type: Written

Lodged Date: 10 June 2010

Decision: Dismissed

Decision Date: 20 July 2010

New Appeals

4 College Avenue, Formby

S/2009/1192 - APP/M4320/A/10/2131855

erection of a detached two storey dwelling after demolition of the attached outbuilding together with a new access onto College Path, access gates and a new front boundary wall to a maximum height of 1.8 metres

Appeal Type: Written

Lodged Date: 12 July 2010

Decision:

Decision Date:

First Floor Flat 170 Lord Street, Southport

S/2010/0393 - 2132596

Retention of a timber decking area/balcony to the rear of the first floor flat together with 1.1m high railings and a proposed 1.9m high translucent sheeting to the side of the decking area.

Appeal Type: Written

Lodged Date: 27 July 2010

Decision:

Decision Date:



The Planning Inspectorate

Environment Appeals Team Direct Line 0117-372-8192
Room 4/04, Kite Wing Switchboard 0117-372-8000
Temple Quay House Fax No 0117-372-6241
2 The Square
Temple Quay
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Ms C Robertson
Sefton Council
Monitoring at Planning
Magdalen House
30 Trinity Road
Bootle
Merseyside L20 3NJ

Your Ref: S/2009/0804

Our Ref: APP/TPO/M3420/980

Date: 21 July 2010

SEFTON COUNCIL

22 JUL 2010

REGENERATION/SSU

Dear Ms Robertson

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED), SECTION 78
APPLICATION FOR CONSENT TO CARRY OUT WORKS TO PROTECTED TREES
APPELLANT: Mr & Mrs Staines
SITE: 18 York Close, Birkdale, Southport, PR8 2TX

I enclose a copy of our Inspector's decision on the above appeal following the hearing on 29 June 2010.

The appeal decision is final unless it is quashed following a successful challenge in the High Court on a point of law (see enclosed leaflet). If the challenge is successful the decision may be quashed but the case will probably be returned to the Secretary of State for re-determination. However, if it is to be re-determined, it does not necessarily follow that the original decision on the appeal will be reversed.

An application under Section 288 of the Town & Country Planning Act 1990 must be made to the High Court promptly and in any event within 6 weeks of the decision in question. This is an absolute time limit that cannot be extended by the Court.

A challenge must be made on one or both of the following grounds:

- (1) the decision is not within the powers of the Town and Country Planning Act 1990;
- (2) any of the relevant statutory requirements have not been complied with.

A decision will not be overturned by the Court merely because someone does not agree with an Inspector's judgment. It would need to be shown that a serious mistake was made by the Inspector when reaching his or her decision or, that the site visit was not handled correctly, or that the appeal procedures were not carried



out properly. Even if a mistake has been made, the Court may decide not to quash the decision if it is decided that the interests of the person who has sought to challenge the decision have not been prejudiced.

If you have any complaints or questions about a decision, or about the way we have handled the appeal write to:

Quality Assurance Unit
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Phone No. 0117 372 8252

Fax No. 0117 372 8139

Or visit:

http://www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm

The Quality Assurance Unit will investigate your complaint and will endeavour to reply within three weeks.

Yours sincerely

Lee Richards

Mr Lee Richards
Environment Appeals Administration

Enc





Appeal Decision

Hearing held on 29 June 2010
Site visit made on the same day

by **Jacqueline North BSc MSc**

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@plns.gsi.gov.uk

Decision date:

21 JUL 2010

Appeal Ref: APP/TPO/M3420/980 18 York Gardens, Birkdale, Southport, PR8 2TX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent to fell a tree protected by a Tree Preservation Order.
- The appeal is made by Mr & Mrs Christopher Staines against the decision of Sefton Council.
- The application Ref: S/2009/0804, dated 24 September 2009, was refused by notice dated 23 November 2009.
- The work proposed is felling one oak tree.
- The relevant Tree Preservation Order (TPO) is TPO 142, 35-39 York Road, Southport, which was confirmed on 22 August 1994.

Decision

1. I dismiss the appeal.

Main issues

2. I consider that the main issues are: (a) the amenity value of the tree and the likely impact of felling on the character and appearance of the area; and (b) in the light of the assessment above, to consider whether or not the felling is justified, having regard to the reasons put forward in support.

Reasons

(a) The amenity value of the tree and the likely impact of felling on the character and appearance of the area

3. The oak tree (T2 on the TPO) is sited in the front garden of 18 York Gardens, approximately 5.5 metres from the front of the dwelling. It is a mature tree, around 15 to 20 metres in height, with an overall canopy spread of 13 metres and a single main trunk up to a height of around 1.8 metres from where it becomes multi stemmed. The tree is visible from the highway and footway along York Gardens and contributes to the green, leafy and pleasant residential character of the area. The oak appears healthy, with no obvious signs of disease, decay or any other significant damage.
4. I accept that there are many trees in the area and that this tree is not prominent in the street scene as it is sited towards the head of a cul-de-sac, but this does not make the oak any less important. It is visible from public viewpoints, helps screen the York Gardens development from the dwellings to the rear on York Road and is a mature tree with a well balanced canopy.

5. In my view the loss of the oak would harm the street scene even though there are other trees present as it forms a backdrop to the residential development and contributes to the leafy character and mature landscape of the area.

(b) Whether or not the felling is justified, having regard to the reasons put forward in support.

6. The appellants argue that the tree is too large for its position in a front garden and that the house was constructed too close to the oak. The five houses in this part of York Gardens were built in 1999. Prior to their construction the oak tree stood in the long rear garden of 37 York Road. The 1999 new housing development complied with the minimum distance between a tree of this size and maturity and a dwelling specified in British Standard (BS) 5837: *Trees in relation to construction*. The relationship between the tree and the dwelling would also accord with the root protection area specified in the 2005 updated BS5837.
7. Whilst I appreciate that the tree is relatively close to the dwelling, its canopy does not come into contact with the house frontage, although there is a slight overhang over the nearest point of the dwelling, the garage roof. There is no evidence that the tree is causing any physical damage to the fabric of the building.
8. The appellants consider that they can no longer cope with cleaning up debris from the tree due to their age and declining health. They also consider that the presence of twigs, leaves, acorns and other debris is a potential trip/slip hazard. Both these concerns are causing the appellants considerable distress. All trees shed debris throughout the year. I accept that clearing up debris such as twigs, fallen fruit and leaves from the garden and guttering can involve year-round effort, and that this may be difficult for people in poor health. However, this is part of normal garden and property maintenance and does not justify removal of a protected tree. Similarly whilst I appreciate that bird droppings may be a nuisance, this is not a sufficient reason to fell a protected tree.
9. In addition, they are concerned about the amount of sap which falls onto their cars. At the site visit the Council's tree officer suggested that the sap may be due to the presence of whitefly on the tree. Sap production tends to be a seasonal occurrence, and cleaning sap from car paintwork and driveways is also part of routine property maintenance when living in proximity to a tree and provides no justification for removing a healthy protected tree.
10. The appellants are also concerned about potential damage to the drains and foundations. Whilst it is possible that there are roots from the tree under the foundations of the house or close to the drains, I saw no signs of any structural damage, such as movement or cracks in the driveway or damage to drains, during my site visit and the appellants did not submit any evidence in support of these concerns. Therefore I give this argument little weight.
11. Lastly the appellants are agreeable to planting a replacement tree. However a replacement tree would take time to establish and in the short term would not replace the amenity value of the existing oak.

Conclusion

12. In respect of (a) I conclude that the oak tree has a positive impact on the local environment and its enjoyment by the public. Felling of this tree would be harmful to the character and appearance of the area. With regard to (b), having taken account of all the matters raised above, insufficient reasons have been provided to justify felling the tree.

Jacqueline North

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr & Mrs Staines

Appellants

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Eaude

Tree Officer, Sefton Council

Mr W Moody

Sefton Council

DOCUMENTS

- 1 Notification of the hearing and a list of persons notified



Appeal Decision

Site visit made on 6 July 2010

by Clive Sproule BSc MSc MSc
MRTPI MIEnvSc CEnv

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
20 July 2010

Appeal Ref: APP/M4320/D/10/2129251 **34 Roe Lane, Southport, Merseyside PR9 9DZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Anil Mittal against the decision of Sefton Council.
- The application Ref S/2010/0223, dated 6 February 2010, was refused by notice dated 15 April 2010.
- The development proposed is a retrospective application for the erection of a front boundary fence to a maximum height of 2.08m.

Decision

1. I dismiss the appeal.

Procedural matters

2. In the interests of clarity and precision I have used the description of the development proposed that is included on the Council decision notice.
3. This appeal seeks retrospective planning permission for a fence that photographs within the appeal documentation confirm to have been constructed. However, at the time of my site visit only the frame of the fence panel between the gateway and No.36 and mounting blocks on the boundary wall between the site access and No.32 remained.

Main issues

4. The effect of the proposed development on: (a) the character and appearance of the locality; and (b) highway safety.

Reasons

5. Policy DQ1 of the Sefton Unitary Development Plan (UDP) seeks a planning proposal to respond to the character and form of its surroundings and make a positive contribution to them. It is supported by Supplementary Planning Guidance entitled *House Extensions* (SPG) which indicates that new fences along front boundaries should take account of the character of the area and the design of similar boundaries at surrounding properties. The guidance states that fences or walls that are 2m or more in height will generally not be allowed unless they are a characteristic of the area.
 6. Roe Lane is a busy suburban thoroughfare. No.34 is a large house that is set back from the highway in an area with many similar dwellings and a number of more recently constructed apartment buildings.
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7. Dwellings in this locality are typically set within mature gardens. Boundary treatments vary within the street scene, but often contain substantial gate posts with lower sections of brick walling. Vegetation provides an element of screening to dwellings on Roe Lane and in some instances wood fencing and railings are also fixed to the frontage boundary walls. These wooden fences often differ in height, which contributes to the diversity of the frontage boundary treatments in this townscape.
8. The proposal is noted to be over 2m in height. It would be next to fencing of similar height at No.32 and near to that at No.46. However, these existing fences are in corner locations and whilst others of a similar height may be present in the locality, it is the variety in boundary treatment that is a characteristic of this area.
9. Whilst the proposed design would be sympathetic to the neighbouring structure at No.32, by their scale and similarity of appearance the fences would consolidate the visual impact of these structures in the street scene. I find the proposed development would conspicuously erode the characteristic variety of boundary treatments within the townscape. I conclude on the first main issue that it would do so in a manner that would be unacceptably harmful to the character and appearance of the locality and in this respect conflicts with UDP Policy DQ1 and the SPG.
10. Turning to the second main issue, UDP Policy AD2 seeks development proposals to ensure a minimum level of accessibility that will include, amongst other things, safe and adequate connections to the highway. Additionally, in seeking good quality design UDP Policy DQ1 is only permissive of development proposals that ensure safe and easy movement into and out of a site.
11. No.34 has an existing access flanked by gate posts and a perimeter wall. The Council Officer report on the application notes the boundary wall to be in the region of 1.22m high and the Grounds of Appeal state the gate posts to be 1.64m. Advice in respect of visibility splays is provided within *Manual for Streets*, which indicates that the eye height for car drivers can be assumed to be 1.05m and higher for the drivers of taller vehicles. Whilst it would be possible for the drivers of some vehicles to see over the gate posts, in the absence of the proposed fence these existing characteristic features would still restrict the visibility of the drivers of many domestic vehicles. In addition, any mature garden planting to the side of the gate posts would be likely to further restrict visibility at this access.
12. The access at No.34 is typical of many in this locality. Whilst the visibility for drivers leaving some of these accesses may be limited, it has not been demonstrated that the accident record associated with their use is unusually high. Consequently, I conclude that it has not been established that the appeal scheme would fail to provide safe and adequate connections to the highway and in this respect it complies with the relevant parts of UDP Policies AD2 and DQ1.

Other matters

13. Occupiers of vehicles and pedestrians travelling along Roe Lane have views of the front garden and windows at the appeal site, as do people waiting at the bus stop outside No.34. The appellant seeks increased privacy through the

proposed development. Nevertheless, No.34 is set back from the highway which gives the occupiers of the house a similar potential degree of privacy to that of neighbouring dwellings. This includes access to private amenity space at the rear of the property.

14. The appeal scheme would restrict many of the views into No.34. However, this could also be achieved by vegetative screening along the front boundary of the property, which could be supplemented by the use of window blinds and curtains to provide the level of privacy sought. Such measures are evident in the vicinity of the appeal site, including recent planting at No.34.
15. This is a suburban area where a certain degree of overlooking from the highway can be expected and already occurs. Given the specific circumstances that pertain to this location, the level of overlooking of the front of No.34 is not unusually high for a residential environment of this kind. Nor has it been demonstrated that in the absence of the development proposed, the appellant would be unable to achieve higher levels of privacy at the front of the property. I find the levels of overlooking on Roe Lane to not be unacceptably harmful to the living conditions of the occupiers of No.34.
16. Representations have been made to the effect that the appellant's family's rights under Article 8 of the European Convention on Human Rights would be violated if this appeal were to be dismissed. I consider them to be not well-founded because the levels of overlooking on Roe Lane are not unacceptably harmful to the living conditions of the occupiers of the appeal site. Also, the effect of the suggested conditions would not be sufficient to mitigate the harm that would occur to the character and appearance of the street scene. As a result, there will be no violation of the appellant's family's human rights.
17. My attention has been drawn to a number of the Council's planning decisions in relation to boundary fences in the locality around the appeal site. My conclusions in respect of the effect of the appeal scheme on the character and appearance of the locality were reached following consideration of the existing street scene, which includes the fences referred to. Each application and appeal is determined on its own merits and that is how I have dealt with this case. Therefore, whilst the appellant considers the Council to have been inconsistent in its decision making, the examples raised do not set a precedent that I feel obliged to follow.
18. I note the proposed fence would be a means of reducing the amount of litter entering the front garden of the dwelling. However, other methods could be used to control litter and provide increased security. Consequently, I consider that these matters do not outweigh the identified harm. In addition, rather than the lack of harm in respect to highway safety weighing in favour of the proposal, it simply adds no additional weight against it.
19. For the reasons above and having considered all other matters raised, I conclude the appeal should be dismissed.

C Sproule

INSPECTOR



Appeal Decision

Site visit made on 6 July 2010

by **Clive Sproule** BSc MSc MSc
MRTPI MIEEnvSc CEnv

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
20 July 2010

Appeal Ref: APP/M4320/D/10/2129982

40 Matlock Road, Birkdale, Southport, Merseyside PR8 4EL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Michael Leamey against the decision of Sefton Council.
- The application Ref S/2010/0374, dated 10 February 2010, was refused by notice dated 20 May 2010.
- The development proposed is a first floor bedroom extension.

Decision

1. I dismiss the appeal.

Main issue

2. The effect of the development proposed on the living conditions of the occupiers of 40 Matlock Road in relation to outlook.

Reasons

3. The Council's reason for refusal refers to Policy MD1 of the Sefton Unitary Development Plan, which is only permissive of house extensions that comply with the policy's criteria. However, these criteria do not explicitly address the living conditions of the occupiers of a proposed development in relation to outlook.
 4. The Council's *House Extensions* Supplementary Planning Guidance (SPG) contains design principles for all house extensions, but these also do not clearly address the aspects that would be available from extension windows. I therefore turn to national policy within Planning Policy Statement 1 - *Delivering Sustainable Development* (PPS1). It states that design which fails to take the opportunities available for improving the character and quality of an area should not be accepted.
 5. No.40 is a semi-detached house in an area with similar properties. The layout of development on the opposite side of Matlock Road enables vehicular access to the rear of a number of dwellings on that side of the street. In contrast, the gable ends of the semi-detached blocks that include No.40 are in much closer proximity to each other.
 6. The existing two first floor rear bedrooms at No.40 have windows with views toward the back garden of the dwelling. The works for the proposed first floor extension would modify the layout of these rooms. Whilst the proposed master bedroom window would have an open aspect to the rear of the house, the enlarged second rear bedroom would only have a gable window.
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7. Room windows contribute to the living conditions of a dwelling by providing both light and outlook. A poor outlook can create a sense of enclosure within a room and this can have a significant effect on the living conditions of the occupiers of a dwelling. The provision of adequate outlook is especially important to habitable rooms where people would reasonably be expected to spend longer periods of time.
8. The proposed bedroom gable window would serve a habitable room and the proximity of the neighbouring semi-detached block to this opening would cause it to have a very restricted outlook. Obscure glazing this window would further limit the outlook from it. Whilst the current occupiers of No.40 wish to construct the appeal scheme, I must consider the living conditions of all of the people who may reside at this house in the future. I find the constraints on the aspect from the proposed bedroom gable window would be sufficient to be unacceptably harmful to the living conditions of the occupiers of No.40.
9. I note the personal circumstances of the appellant's family and that the proposed development would provide additional living space and facilities for them. However, these matters do not outweigh the harm that I have identified and by failing to improve the quality of the accommodation in this area, the appeal scheme conflicts with PPS1.
10. My attention has been drawn to a gable window at the other side of the semi-detached block, but I have few details regarding the background to the installation of this window and the living space that it serves. In any event, each application and appeal is determined on its own merits and that is how I have dealt with this case. Consequently, the neighbouring window does not set a precedent that I feel obliged to follow.
11. For the reasons above and having considered all other matters raised, I conclude the appeal should be dismissed.

C Sproule

INSPECTOR