

APPENDIX

Committee: PLANNING

Date Of Meeting: 13th January 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 04 December 2009 to 30 December 2009

Decisions

Land to the rear of 8-10 Cable Street, Formby

S/2009/0252 - 2108450

Removal of condition 9 on planning permission N/2007/1131

Appeal Type: Written

Lodged Date: 17 September 2009

Decision: Allowed

Decision Date: 15 December 2009

New Appeals

Land at junction of Northway / Westway, Maghull

S/2009/0839 - APP/M4320/H/09/2117958

Advertisement Consent to display 1no. externally illuminated sign board on vacant land at the junction of Northway and Westway

Appeal Type: Written

Lodged Date: 11 December 2009

Decision:

Decision Date:

New Enforcement Appeals

33 Pilkington Road, Southport

ENF0330 – APP/M4320/09/2117110

Without planning permission, within the last four years, the erection of timber stairs on the southern side of the single storey rear extension and a timber decking area with surrounding timber balustrade on the roof of the single storey extension at the rear of the property.

Appeal Type: Written

Lodged Date: 26 November 2009

Decision:

Decision Date:



Appeal Decision

Site visit made on 3 December 2009

by **Jim Metcalf** BSc DipTP MRTPI

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

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Decision date:
15 December 2009

Appeal Ref: APP/M4320/A/09/2108450

Land to the rear of 8-10 Cable Street, Formby, L37 3LX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Mark Ellis against the decision of Sefton Council.
- The application Ref S/2009/0252, dated 13 February 2009, was allowed on 20 May 2009 subject to conditions.
- The development permitted is 'removal of condition 9 on planning permission N/2007/1131'.
- The condition in dispute is No 9 which states that 'The french doors to the first floor rear elevation of plots 26 and 27 must be enclosed by a balustrade, balconette or by a juliet balcony and maintained as such thereafter'.
- The reason given for the condition is 'to ensure that no access is to be gained to the first floor roof terrace in the interests of privacy of neighbouring property and to comply with Sefton UDP Policy H10'.

Decision

1. I allow this appeal and vary planning permission S/2009/0252 for the 'removal of condition No 9 on planning permission N/2007/1131' granted on 20 May 2009 by Sefton Council by deleting condition No 9.

Background

2. In 2006 the Council granted planning permission (ref N/2006/0705) for the layout of a road and the erection of 34 two and a half storey dwellinghouses and 3 two storey dwellinghouses fronting onto Cable Street (Alternative to N/2005/1191) on land to the rear of 8-10 Cable Street, Formby.
3. Subsequently a revised planning application (ref N/2007/1131) for a 're-design and revised locations of plots 12 to 18 inclusive (alternative to Planning Application N/2006/0705 approved 21/09/2006)' was approved. The Council imposed a number of conditions. Condition No 9 stated:

Notwithstanding the layout drawings sk02-sk06, the rear elevations of plots 26-27 shall be constructed entirely in accordance with the details marked 'C' revised plots 26 & 27 as per drawing sk11 and shall remain free of balconies or balustrade additions without the prior approval of the Local Planning Authority.

4. The reason given for the condition was:

In the interests of privacy of the neighbouring property and to comply with Sefton UDP Policy H10.

5. Subsequently the Council granted planning permission (Ref S/2009/0252) for the removal of condition No 9. However, they replaced it with another Condition No 9 that stated:

The french doors to the first floor rear elevation of plots 26 and 27 must be enclosed by a balustrade, balconette or by a juliet balcony and maintained as such thereafter.

6. The reason given for the condition was:

To ensure that no access is gained to the first floor roof terrace in the interests of privacy of the neighbouring property and to comply with Sefton UDP Policies H10.

7. This condition is the subject of appeal. The appellant seeks its removal.

Main Issue

8. I consider the main issue is the effect of the use of the balconies at the rear of the houses on plots 26-27 on the living conditions of residents in Church Road with regard to overlooking and privacy.

Reasons

9. Plots 26-27 on the new housing estate built off Cable Street are directly behind No 78 Church Road. At ground floor level the pair of houses project behind the main rear wall with a balcony above. French doors in the first floor living room give access onto the balcony that runs the full width of each house. The balcony is about 1.7m wide and is surrounded by a parapet brick wall about 1.1m high. Conditions attached to planning permissions ref N/2007/1131 and S/2009/0252 effectively, by different wording, sought to prevent residents using the balconies.
10. From the balconies there are direct views of the garden at the rear of No 78 Church Road and the house beyond. The rear gardens of the houses on plots 26-27 are about 10.5m long. This is the minimum distance set down in the Council's Supplementary Planning Guidance 'New Housing Development' (SPG). The distances in SPG are intended to prevent an unacceptable amount of overlooking between existing and proposed homes.
11. The minimum distance between a first floor habitable room window and any habitable room window in other houses should be 21m according to SPG. The distance between the parapet of the balcony and the rear wall of No 78 Church Road is about 31m. Although the distances in SPG concern the relationship between facing windows, rather than the position of balconies, I regard them as a useful yardstick designed to keep overlooking to reasonable levels. Some overlooking, with a consequent effect on privacy commonly occurs in urban areas.
12. Circular 11/95 'The Use of Conditions in Planning Permissions' states that it is possible, exceptionally, to impose conditions to restrict further development, which would normally be permitted by a development order. Circular 11/95 explains that there is a presumption against such restrictions as the

development orders are designed to give a freedom from detailed control which will be acceptable in the great majority of cases.

13. Condition No 9 involves such detailed control in seeking to prevent overlooking from the balcony of the new houses into the garden and house behind. However, the distances involved accord with the Council's well established guidelines. Although the garden length involved is the minimum, the house to house distance is significantly in excess of the guideline. In the context of the SPG although people on the balconies would see the garden and house at No 78 Church Road the distances are such that use of the balconies at the rear of the houses on plots 26-27 would not unreasonably prejudice the living conditions of residents in No 78 Church Road with regard to overlooking and privacy. I find the balconies compliant with Policy H10 of the Sefton Unitary Development Plan.

14. In this situation I cannot see that exceptional circumstances exist to justify, in the terms of Circular 11/95, the detailed control over the use of a property involved in Condition No 9. I find the condition to be unnecessary and unreasonable. Accordingly I uphold the appeal.

Jim Metcalf

INSPECTOR