

WEST OXFORDSHIRE DISTRICT COUNCIL
LOWLANDS AREA PLANNING SUB-COMMITTEE
MONDAY 16 MARCH 2020
UNAUTHORISED OPERATIONAL DEVELOPMENT
50 RICHENS DRIVE CARTERTON OX18 3XU
17/00114/PENF
REPORT OF THE HEAD OF PLANNING AND STRATEGIC HOUSING

(Contact: Kelly Murray Tel: (01993) 861674)

(The Sub-Committee's decision on this matter will be a resolution.)

1. PURPOSE

- 1.1. To enable Members to consider whether it is expedient to authorise the issue of an enforcement notice.

2. RECOMMENDATION

- 2.1 Issue an enforcement notice to require an unauthorised porch to be removed or reduced in size so that its floor area does not exceed permitted development limits.

3. BACKGROUND

- 3.1 In 2017 the Council received complaints about the erection of a porch at this property, which is situated within an estate to the west of Carterton. On investigation it transpired that the contravener had not sought planning permission as he was seeking to rely on permitted development rights under the Town and Country Planning (General Permitted Development)(England)Order 2015 ("GPDO"). The ground area of the porch however exceeded the limitations set out in the GPDO and therefore brought the whole development under planning control.
- 3.2 A retrospective planning application (17/03250/HHD) was refused on 20 February 2018 following Members' resolution at the Sub-committee meeting on 12 February. The grounds for refusal were visual impact, in that its disproportionate size made it an incongruous and alien feature within the street scene. Also, due to its size and position along the common boundary with the neighbour, the porch was considered adversely to affect the outlook and light serving the primary living space of the occupiers of 49 Richens Drive. The relevant extract from the minutes of the Sub-Committee meeting are attached at [Annex 1](#). It should be noted that in resolving to refuse the application, Members were sympathetic to the applicant's particular circumstances: the porch was intended to give him further space and flexibility required to manage a disability, including the provision of a downstairs lavatory. The contravener had also stated that he had not deliberately breached planning control, rather he had erroneously received advice from his builder that permission was not required for the porch.
- 3.4 The contravener appealed against the refusal and this appeal was dismissed on 9 July 2018 (appeal decision attached at [Annex 2](#)). Part of the Inspector's findings was as follows:-

"The location of the extension in the middle of the terraced row along with

the extent to which it protrudes compared to other extensions within the row and wider road is further exacerbated by the extent to which the property stands forward of No 49. In combination the overall size and scale of the development appears intrusive and overbearing and as such is incongruous in the street scene.”

He went on to state:-

“The front of No 50 projects well beyond No 49. As such the development is clearly visible from this dwelling which has a habitable room window on the ground floor front elevation. Although the extension is single storey, the very close proximity of the development to the boundary with the neighbour creates a development that appears prominent and visually intrusive. Even if the proposal does not impact on the light into these windows and not generate any harm with regards overlooking, the scale and massing of the extension has an overbearing impact harming the outlook of the occupants of the neighbouring dwelling.”

4. NEXT STEPS

- 4.1 Following the appeal decision, the contravener wished to explore alternative options involving reduction of the porch. Mindful of Members’ sympathy for the applicant and the Development Manager’s agreement expressed at Committee to work with the contravener in finding a solution, there then followed a protracted period of communication in which the contravener sought advice on whether various proposals would require planning permission. When no progress appeared to have been made on removing or reducing the porch, communications culminated in Enforcement Officers writing in October and November last year informing the contravener that they now had little choice but to commence enforcement action. An application for amendments to the porch and for construction of a canopy supported by posts was then submitted (application 20/00016/HHD due for consideration by the Sub-committee at this meeting). If Members resolve to accept Officers’ recommendation to refuse that application, the next step is to consider whether it is expedient to commence formal enforcement action.

5. ENFORCEMENT ACTION AND HUMAN RIGHTS

- 5.1 The Council has the power to issue an enforcement notice where it appears: first, that there has been a breach of planning control and secondly, that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations. The Council must also have regard to relevant guidance, including the NPPF which sets out at paragraph 58:-

“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.”

- 5.2 In this case, the breach of planning control is one which a Planning Inspector has identified as causing harm both visually, as an intrusive and incongruous structure and also in terms of its overbearing impact on the immediate neighbour. As such, the development is contrary to policies OS2, OS4 and H6 of the WOLP 2031.
- 5.3 The recommended enforcement action would require the owner either to remove the porch altogether, or to reduce it to within permitted development limits. This potentially engages provisions of the European Convention on Human Rights.
- 5.4 Article 1 of the First Protocol to the European Convention on Human Rights provides

for the peaceful enjoyment of possessions. This right applies also to legal persons, including companies. It is, however, a qualified right and the Courts recognise that it has to be balanced against the need to enforce laws controlling the use of property in accordance with the general public interest. In this case Officers consider – and the appeal Inspector agreed – that there is harm to the character and appearance of the area and neighbours’ amenity. In view of this, the balance of interest lies in the need to reduce the length of the porch to remedy the identified harm. Having regard to government guidance and the principle of proportionality, enforcement action is required and is an expedient and a proportionate response to the harm identified in this report.

Public Sector Equality Duty

- 5.5 Under section 149 of the Equality Act 2010 public authorities must, in the exercise of their functions, have due regard to removing or minimising disadvantages to disabled persons through considering the need to take steps to take account of their disabilities. In this case the applicant suffers from a disability and has set out in correspondence to the Council that the porch works were carried out in order to assist him with daily living. In this regard, the Planning Inspector in dealing with the appeal stated as follows:-

“I note the personal circumstances of the appellants need for the development and I sympathise with their situation. I also note the benefits the scheme has provided since construction. The development provides an adapted living space for the occupant to meet their existing and future needs. I have not however been provided with any substantive evidence to demonstrate that the extension provides the only option in terms of making adjustments to improve the living conditions within the home. The benefits of the development for the occupant of the property are outweighed by the significant harm that arises from it.

I have empathy for the applicant regarding any additional work that may be required to the property as a result of any incorrect advice about the need for planning permission for the development. However, irrespective of who would undertake any amendments to the scheme and at what cost to the appellant, there is little evidence to demonstrate that a scheme that fell within the requirements of permitted development would not address the harm identified to the character and appearance of the area and to the living conditions of the neighbouring occupier.”

- 5.6 In Officers’ view the considerations set out above apply in deciding whether it is expedient to issue enforcement action in this case. Significant harm has been identified and this outweighs the benefits conferred by the unauthorised element of the development. One of the main reasons for the size of the porch was to provide a downstairs lavatory which will remain accessible following remedial works.

Accordingly, the options for next steps are as follows:-

Take no further action

- 5.7 In light of Officers’ assessment of the harm caused by the development, Members’ resolution to refuse the 2017 application and the conclusions of the Planning Inspector on appeal, it is considered that formal action must be taken to remedy the harm. There is a 4-year enforcement period that will come to an end in 2021. If action is not taken during this time the development will become immune from enforcement action. In view of this, delaying action at this stage or indeed taking no further action is not a recommended option.

Issue an enforcement notice to secure the removal of the porch/ its

reduction to within permitted development tolerances.

- 5.8 The service of an enforcement notice will reserve the Council's position and will force the contravener to take positive action. This will not preclude further negotiation with the Council on further works that the contravener may consider necessary, however, he will be given a timetable in which he must carry out the required works.

6. ALTERNATIVES / OPTIONS

Take no further action- see above.

7 RISK

None at this stage.

8. FINANCIAL IMPLICATIONS

None at this stage.

9. REASONS

See paragraphs 5.2, 5.7 and 5.8 above.

**EXTRACT FROM MINUTES OF THE MEETING OF THE
LOWLANDS AREA PLANNING SUB-COMMITTEE, 12 FEBRUARY 2018**

The Planning Officer introduced the application and reported receipt of additional representations from the applicant, Mr Caswell, and from Mr Spicer.

The applicant, Mr Caswell, then addressed the meeting in support of the application. A summary of his submission is attached as Appendix C to the original copy of these minutes.

In response to a question from Mr Howard, Mr Caswell confirmed that the sunshine diagram in his accompanying papers was that as at 7 February 2018.

In response to questions from Mr Postan and Mr Good, Mr Caswell advised that he had drawn up the plans for the porch and compiled the pictures and notes he had circulated.

Mr Fenton enquired whether the porch had been constructed outside the limits of permitted development in error or deliberately. Mr Caswell stated that the Council's Officers had advised that planning permission was not required. He explained that the design of the porch made provision for a wheelchair turning space.

The Planning Officer then presented her report containing a recommendation of refusal.

Mr Howard indicated that, having viewed the development, he concurred with the Officer's assessment that it was too large and out of keeping. He expressed concern over the displacement of vehicles onto the highway and questioned whether the design and construction of the porch had taken sufficient account of the applicants potential future welfare needs.

Mr Howard noted that the sunshine diagram related to a specific date and indicated that the impact of the development in terms of shading would be worse at different times of the year.

Mr Howard also sought to clarify the original extent of the property and questioned whether this had any impact upon the extent of permitted development rights.

The Development Manager advised that, as far as could be ascertained, there had been no previous extension of the property and full permitted development rights applied.

Mr Good indicated that, whilst he had sympathy for the applicant's position, the fact remained that, as a matter of planning law, the extension exceeded permitted development limits. If an application had been submitted it would have been refused for the reasons set out in the report. Mr Good was unable to support the application and proposed the Officer recommendation of refusal.

The proposition was seconded by Mr Howard.

Mr Emery expressed his support for the Officer recommendation as the porch exceeded permitted development limits. He questioned whether, should the porch be reduced in size to comply with permitted development rights, the Council would have no further locus in the matter. As an aside, Mr Emery suggested that the neighbour could improve his own position if he removed the palm in his front garden.

Mr Fenton suggested that the question of light and shading was a diversion from the real issue which was that the porch failed to comply with permitted development rights. He suggested that the applicant should seek to pursue his advisors to seek to recoup any consequential loss.

Mr Handley agreed that the application should be refused and enquired whether the porch had been inspected by the Council's Building Control Service. The Planning Officer advised that there was no record of an inspection having taken place.

The Development Manager emphasised that refusal of planning permission would be the first of a two stage procedure and suggested that any enforcement action be delayed to enable Officers to seek to identify a solution.

Mr Kelland asked whether there was any evidence to support Mr Caswell's assertion that Officers had advised that planning permission would not be required. The Development Manager advised that there was no record of any such advice and Mrs Crossland indicated that it was her understanding that the builders maintained that they had received this advice by telephone.

The Development Manager informed Members that Officers would not give such specific advice by telephone but would simply inform the enquirer of the rules governing permitted development. An applicant would not be advised that planning permission would not be required unless details of the proposed development were known.

The Officer recommendation of refusal was then put to the vote and was carried.

Refused



Appeal Decision

Site visit made on 25 June 2018

by K Ford MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th July 2018

Appeal Ref: APP/D3125/D/18/3202448
50 Richens Drive, Carterton OX18 3XU

- 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 Phil Caswell against the decision of West Oxfordshire District Council.
 - The application Ref 17/03250/HHD, dated 6 October 2017, was refused by notice dated 20 February 2018.
 - The development proposed is erection of a single storey porch at the front of the property.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application seeks retrospective permission for development that has already been constructed. I have assessed the appeal on this basis.

Main Issues

3. The main issues are:
 - The effect on the character and appearance of the area.
 - The effect on the living conditions of the occupants on the neighbouring property, No 49 Richens Drive with regards outlook and light.
 - The effect on off street parking provision.

Reasons

Character and Appearance

4. The appeal site is a mid-terrace property in a staggered row of dwellings with No 50 and the immediate neighbour No 51 standing forward of Nos 48 and 49. Properties in the row have either a flat roof canopy over the front door or a flat roof enclosed porch. The integral garage of the property has been converted to a habitable room at some time in the past, as has occurred at other properties. Due to the size of the front porch the block paving to the front of the property provides parking provision for one small car.
5. Whilst designed to meet the minimum requirements of **the occupant's existing** and future needs, the extension is very visible even if it is not significantly

larger that would be permitted under permitted development rights. The location of the extension in the middle of the terraced row along with the extent to which it protrudes compared to other extensions within in the row and wider road is further exacerbated by the extent to which the property stands forward of No 49. In combination the overall size and scale of the development appears intrusive and overbearing and as such is incongruous in the street scene. This is despite design features such as a flat roof, doors and windows to match the surroundings and the use of materials to match the main dwelling.

6. The development harms the character and appearance of the area and as such conflicts with the part of Policy OS2 of the West Oxfordshire Draft Local Plan 2031 (including further main modifications) (emerging Local Plan) which seeks to ensure new development is proportionate and appropriate in scale to its context and forms a logical complement to the existing scale and pattern of development and/ or character of the area. Whilst the emerging Local Plan has not yet been adopted which limits the weight that can be attributed to it, the proposal nonetheless also conflicts with the parts of Policies BE2 and H2 of the West Oxfordshire Local Plan 2011 (Local Plan) which requires new development, including extensions to dwellings, to respect the existing scale, pattern and character of the surrounding area and that extensions to dwellings should not erode the character and appearance of the surrounding area.

Living Conditions

7. The front of No 50 projects well beyond No 49. As such the development is clearly visible from this dwelling which has a habitable room window on the ground floor front elevation. Although the extension is single storey, the very close proximity of the development to the boundary with the neighbour creates a development that appears prominent and visually intrusive. Even if the proposal does not impact on the light into these windows and not generate any harm with regards overlooking, the scale and massing of the extension has an overbearing impact harming the outlook of the occupants of the neighbouring dwelling.
8. The development harms the living conditions of the neighbouring occupants and as such conflicts with the parts of Policies OS2 and OS4 of the emerging Local Plan which requires that new development should not have a harmful impact on the amenity of existing occupants. It also conflicts with Policy H2 of the Local Plan which amongst other things seeks to ensure that new development does not create unacceptable living conditions for existing residents.

Off street Parking Provision

9. The appellant says that since the conversion of the internal garage of the property to a room, and in the absence of a dropped kerb spanning the full width of the property, only one off street parking space is currently provided. Even if the dropped kerb was extended, from my observations on site I am not convinced that 2 cars could comfortably park adjacent to each other in the absence of the porch. Given the parking standards emanating from the relevant parts of Policies T1 and T4 of the emerging Local Plan and Policy BE3 of the Local Plan which set a maximum requirement of 2 spaces at the appeal site, I do not consider that the development exacerbates an existing absence of

the provision of off street parking at the property. The development does not therefore conflict with Policy in this regard.

Other Matters

10. Paragraph 57 of the National Planning Policy Framework (NPPF) identifies the importance of planning positively for the achievement of high quality and inclusive design for all development, including individual buildings and public and private spaces. Inclusive design in the NPPF is defined as **'designing the built environment, including buildings and their surrounding space, to ensure that they can be accessed and used by everyone'**. In exercising my duty on behalf of a public authority, I am mindful of the requirements of the Public Sector Equality Duty contained in the Equality Act 2010. This includes the need to advance equality of opportunity, which may involve taking steps to meet particular needs.
11. I note the personal circumstances of the appellants need for the development and I sympathise with their situation. I also note the benefits the scheme has provided since construction. The development provides an adapted living space for the occupant to meet their existing and future needs. I have not however been provided with any substantive evidence to demonstrate that the extension provides the only option in terms of making adjustments to improve the living conditions within the home. The benefits of the development for the occupant of the property are outweighed by the significant harm that arises from it.
12. I have empathy for the applicant regarding any additional work that may be required to the property as a result of any incorrect advice about the need for planning permission for the development. However, irrespective of who would undertake any amendments to the scheme and at what cost to the appellant, there is little evidence to demonstrate that a scheme that fell within the requirements of permitted development would not address the harm identified to the character and appearance of the area and to the living conditions of the neighbouring occupier.
13. The appellant has identified elements of the scheme that they consider to be beneficial including a reduction in the need for artificial lighting from the skylight, the recycling of materials, improvements to energy efficiency, lack of financial cost to neighbours and communication with them prior to construction. I do not consider such considerations go significantly beyond what may reasonably be expected from a development or provide a compelling justification for the development that outweighs the harm I have found.

Conclusion

14. Whilst I am of the view that the development does not harm off street parking provision at the property, the porch does harm the character and appearance of the area and the living conditions of the neighbouring occupant. For the reasons identified I therefore conclude that the appeal should be dismissed.

K Ford

INSPECTOR