

DEVELOPMENT SERVICES

REPORT TO CITY CENTRE,
SOUTH & EAST PLANNING &
HIGHWAYS COMMITTEE
17 DECEMBER 2012

1.0 RECORD OF PLANNING APPEALS SUBMISSIONS AND DECISIONS

This report provides a schedule of all newly submitted planning appeals and decisions received, together with a brief summary of the Secretary of State's reasons for the decisions.

2.0 NEW APPEALS RECEIVED

(i) An appeal has been submitted to the Secretary of State against the decision of the City Council to refuse planning permission, under delegated powers, for the retention of an existing telecommunication installation and the removal of an existing generator at the site of Tempered Spring Co. Ltd, Waverley House, Effingham Street (Case No 12/01093/TEL).

(ii) An appeal has been submitted to the Secretary of State against the decision of the City Council to refuse planning permission, under delegated powers, for the re-signage of a building, including internally illuminated fascia sign, internally illuminated projecting sign and non-illuminated signage to ATM at the site at Swank Hayden Connell, Clan House, Turners Lane (Case No 12/02714/ADV).

(iii) An appeal has been submitted to the Secretary of State against the decision of the City Council to refuse planning permission and serve an Enforcement Notice in respect of an unauthorised House in Multiple Occupation at 21 Fieldhead Road.

3.0 APPEALS DECISIONS - DISMISSED

To note that an appeal against an Enforcement Notice served by the City Council relating to the use of ancillary living accommodation as a separate dwelling to the main house at 10 Birkendale has been dismissed and an application for costs refused.

Officer Comment:-

A planning condition required the use of the outbuilding to no 10 Birkendale as living accommodation to be incidental to the main dwelling (no 10).

An enforcement notice had been served following complaints that the

accommodation was being let as separate living accommodation, and following protracted investigation, the service of Breach of Condition Notices (BCN), and court action after non-compliance with the BCN's. The Enforcement Notice required the unauthorised use to cease.

The appellant appealed on ground (b) – that the breach has not occurred. The basis of this appeal was that the occupier of the outbuilding was the appellant's mother, and the use was therefore incidental.

The Inspector considered the validity of the condition in the first instance and concluded that it met the six tests of a valid condition, as set out in Circular 11/95.

He noted that the outbuilding was currently occupied by the appellant's mother, and the Council did not dispute this. However, he commented that it is often the case that there is a gap between the contravening use being detected and the service of the notice, and this was not a reason to dismiss the appeal.

He also agreed with the Council that that had been a clear breach between at least 2009 and 2011 when the property was let to a third party as a separate dwelling. This was confirmed by evidence gathered by the Council, and by the appellant himself. On this basis he dismissed the ground (b) appeal and the notice was upheld.

Officers are however satisfied that the notice has been complied with.

The Inspector also dismissed a claim for an award of costs. The appellant claimed the Council had acted unreasonably in serving the notice and had caused him unnecessary expense. The Inspector concluded that the Council had acted reasonably in that there was a clear breach of planning control and adequate investigations had been carried out before serving the notice, and submitted substantial evidence in response to the appeal.

The application for an award of costs was therefore refused.

4.0 RECOMMENDATIONS

That the report be noted

David Caulfield
Head of Planning

17 December 2012