Report of the Director of Planning and Regeneration Service

ITEM NO. SUBJECT

1 Ref: CC1975/0022

Page No.
Withdrawal of Enforcement Notice in relation to land at Common Road, North Anston (now known as Brickyard Cottage, Common Road, North Anston).

2 Ref: RB1999/1350PN

Page No. Appeal Decision – Dismissed and Enforcement Notice upheld.151

Enforcement Notice appeal against an enforcement notice requiring demolition of building at Falconer Farm, Smallage Lane, Fence

3 Ref: RB2011/0609

Page No. Appeal Decision – Dismissed 154

Erection of two storey front extension at 120 Greenland Avenue, Maltby for Mrs. S. Beach.

4 Ref: RB2011/0404

Page No. Appeal Decision – Allowed 157

Retrospective permission for raising rear garden 300mm and erection of new front boundary wall at No.11 Hoober Court, Rawmarsh for Mr. G. Watson.

5 Courtesy Consultation Procedures

Page No. 161

ROTHERHAM METROPOLITAN BOROUGH COUNCIL PLANNING REGULATORY

BOARD

PLANNING AND REGENERATION SERVICE REF

REPORT TO COMMITTEE 24TH NOVEMBER 2011

ITEM 1 Ref: CC1975/0022

Withdrawal of Enforcement Notice in relation to land at Common Road, North Anston (now known as Brickyard Cottage, Common Road, North Anston).

Recommendation: -

That pursuant to Section 173A of the Town and Country Planning Act 1990, the Enforcement Notice issued in relation to the land at Common Road, North Anston (now known as Brickyard Cottage), which required discontinuation of use of land for storing scrap metal and removal of scrap metal, be withdrawn as the requirements of the Notice have now complied with by clearance of the site and discontinuance of use for storing scrap metal.

Background

An Enforcement Notice was served on J E Myers and E H Ducksbury, on 3rd December 1975 requiring the discontinuation of use of land for storing scrap metal and removal of scrap metal

A planning application was submitted on 17th October 1997 under planning reference RB1997/1231 for the demolition of existing cottages and the erection of dwellinghouse and double garage and this permission has been implemented.

Historic photographs show that the site was cleared between the serving of the enforcement notice and 1999, and has remained clear of scrap metal since. The current owner of the property is in the process of selling it and has requested that the Enforcement Notice be withdrawn.

Section 173A of the Town and Country Planning Act 1990, allows Local Planning Authorities to vary or withdraw enforcement notices. Section 173A states:

- "(1) The Local Planning Authority may-
 - (a) withdraw an enforcement notice issued by them; or
 - (b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 173.

- (2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.
- (3) The Local Planning Authority shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.
- (4) The withdrawal of an enforcement notice does not affect the power of the Local Planning Authority to issue a further enforcement notice."

It is considered that the requirements of the Enforcement Notice have now been fully complied with and, as such, the Enforcement Notice, in line with Section 173A of the 1990 Act, should be withdrawn from the property (Brickyard Cottage, Common Road, North Anston).

If Members agree to the withdrawal of the Enforcement Notice then notice would be given to every person that the Notice was served on.

Conclusion

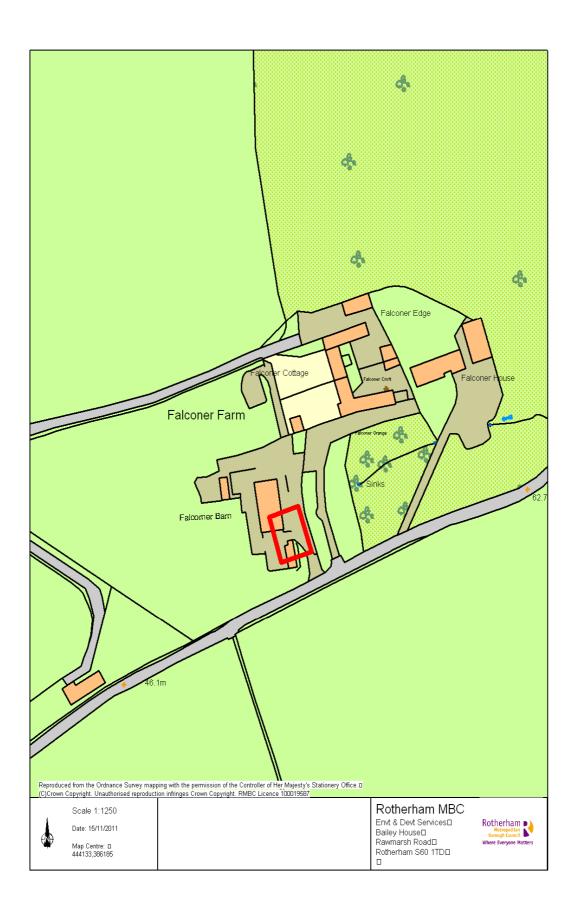
To conclude, it is noted that the requirements of the Enforcement Notice have been fully complied with as the land has been cleared of scrap metal and the use of land to store scrap metal has ceased. As such, the Enforcement Notice should be withdrawn under Section 173A of the Town and Country Planning Act 1990.

ITEM 2 Ref: RB1999/1350PN

Appeal Decision – Dismissed and Enforcement Notice upheld. Enforcement Notice appeal against an enforcement notice requiring demolition of building at Falconer Farm, Smallage Lane, Fence

Recommendation

That the decision to dismiss the appeal and uphold the Enforcement Notice be noted.



Background

A Prior Notification application for the erection of a 'Dutch' barn on the site was submitted by Mr Crump and approved in 1999 (RB1999/1350PN). The application file indicates that the building was accepted, despite being "inappropriate to the scale of the farm holding". and that: "The submitted details show a simple yet handsome hipped roof building, built in brick with round-arched openings to all four sides. There is, however, concern that such a building would not be relevant to the needs of this holding (which is only 7 hectares) and would lend itself to future residential conversion."

It became apparent during the construction of the building that it was not being built in accordance with the approved plans, and Mr Crump wrote requesting that he could convert the building to residential use, though was informed that this would represent inappropriate development. This was due to the fact that the building was erected under Schedule 2 Part 6 of the Town and Country Planning (General Permitted Development) Order 1995 which states that if an agricultural building constructed under permitted development rights ceases to be used for agriculture within ten years of its substantial completion, it should be demolished. As such, it was an unauthorised structure and any proposal for residential development would have to consider the erection of the building itself.

Nevertheless, a planning application was submitted which was refused, and a subsequent appeal dismissed. Due to the personal circumstances of Mr Crump at the time it was not considered appropriate to pursue enforcement action in respect of the demolition of the building, and it was hoped that it would indeed be used for agricultural purposes, though there is no evidence that this has occurred.

A further application for change of use of the barn to 4 No holiday apartments was refused in June 2010 (RB2010/0478), and again an appeal was dismissed.

An Enforcement Notice was issued and came into effect on 3 March 2011 requiring:-

- 1. Removal the building from the land.
- 2. Restoration of the land to the condition it was in before the development took place.

The period for compliance with the requirements is 6 months.

Inspector's decision

An appeal was lodged with the Planning Inspectorate on 16 May 2011 but only in respect of Ground f (that steps required to comply with the requirements of the Enforcement Notice are excessive and lesser steps would overcome the objections).

The Inspector noted that the barn is a substantial building in the Green Belt. Various attempts to gain planning permission for an alternative use have failed in the past. A planning application and subsequent appeal were refused in 2006 and again in 2010. The condition attached to the original permission granted by the Town and Country Planning (General Permitted Development) Order 1995 as amended is clear, and requires the barn to be removed if it ceases to be permanently used for agriculture within 10 years from the date it was built. There is no doubt it was built within the last 10 years, and the appellant offers no evidence that it has not permanently ceased to be used for agriculture.

The Inspector has considered the appeal on ground (f) alone, and the appellant has provided no evidence or explanation as to what lesser works might be appropriate. Consequently the Inspector considered that the requirements of the Notice, to remove the building and restore the land, are perfectly reasonable and the appeal on ground (f) should fail.

The Inspector noted the appellant's comments that the barn has been sold to a charity, but since no evidence has been submitted as to when this took place, the Inspector considered that there was no reason to doubt that the notice was properly served in the first place. The new compliance date for the Notice is 21 April 2012.

It should be noted that a separate planning application has been submitted by Autism Plus to retain the building and use it for horticultural purposes, in connection with the horticultural use of adjoining land. This application was approved by the Chairman and Vice Chairman of the Planning Board and was subject to a condition that the permission shall be solely for the benefit of Autism Plus as it would not have been granted but for the very special circumstances of Autism Plus and their clients. If implemented, it would legitimise the use of the building, though if at some stage in the future Autism Plus stopped using the building, and somebody else began using it, the new operator would have to demonstrate their own very special circumstances to justify retention of the building, or further enforcement action could be pursued.

Conclusion

The Inspector concluded that the appeal should be dismissed, for the reasons outlined above, and the Enforcement Notice upheld.

Item 3 Ref : RB2011/0609

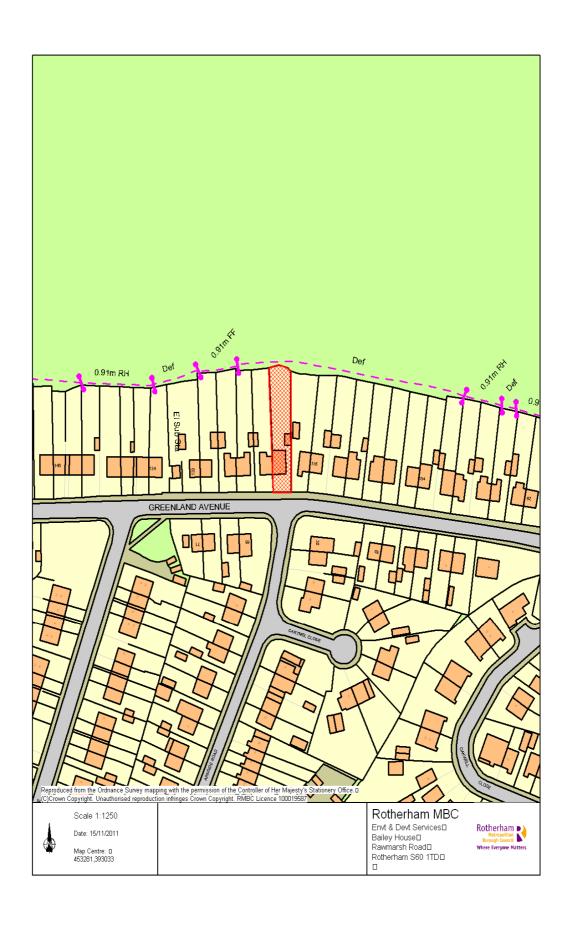
Appeal Decision – Dismissed

Erection of two storey front extension at 120 Greenland Avenue, Maltby

for Mrs S Beach (reference no: RB2011/0609)

Recommendation

That the decision to dismiss the appeal be noted.



Background

The application relates to a semi-detached dwelling located in a residential area north of Maltby town centre. The property is located in the middle of a long row of semi-detached properties which all follow a similar building line to the front. The properties immediately adjacent to this property are all of a similar basic design constructed in the 1960's, whilst to the western end of the road are some older flat roofed properties. Some of the adjacent dwellings have been extended to the front by the addition of canopies and single storey extensions. A planning application was received on 28 April 2011 to erect a two storey front extension to form a porch with bedroom extension over it. The application was subsequently refused under Delegated powers on 28 June 2011 for the following reason:

01

The Council considers that the proposed two storey front extension, by virtue of its design, size and location, will form an incongruous addition which will be out of keeping with and detrimental to the design and appearance of the original dwellinghouse and detrimental to the character and appearance of the wider street scene, contrary to Policy ENV3.1 'Development and the Environment' of the adopted Unitary Development Plan and the advice in Supplementary Planning Guidance, Householder Development and PPS1 'Delivering Sustainable Development.'

Inspector's decision

An appeal was lodged with the Planning Inspectorate on 28 September 2011. The Inspector considered that the main issue was the effect of the proposal on the character and appearance of the existing dwelling and the street scene. The Inspector noted that the appeal property was located in a road of similar dwellings which were broadly on the same building line. Several of the adjacent properties have single storey porch or porch and lounge extensions to the front but the Inspector considered that they had a consistent character and appearance. The proposed extension would be the only one in this road which would be of 2 storey height.

The depth of the proposed extension would be approximately 2.4m whereas the adopted Supplementary Planning Guidance states that the Council will normally allow 2 storey front extensions up to 2m deep but that these should be modest in scale and preserve and reflect the architectural features of the existing house. Additionally, saved Policy ENV3.1 of the Rotherham Unitary Development Plan (1999) (UDP) has the objective of securing development that makes a positive contribution to the area and has a relationship with its context.

The Inspector noted the effect of the existing 2-storey extension at No.28 Arnside Road (Ref RB2008/0819), in a different road opposite the appeal site, on the appearance of that dwelling and considered that, if repeated at the appeal site in the context provided by the more open and consistent linear context of Greenland Avenue, it would be more obviously incompatible. The

effect of the gable on the front elevation and the second floor element of the design would also upset the simple balanced appearance of the present façade. The Inspector considered that the decision to allow the development in Arnside Road weakens the Council's case in relation to the effect on the appearance of the existing building but concluded that the proposed extension would have a harmful effect on the character and appearance of the existing dwelling and the street scene. As such it would be in conflict with objectives of UDP Policy ENV3.1 and the SPG.

Conclusion

The Inspector concluded that the appeal should be dismissed for the reasons outlined above.

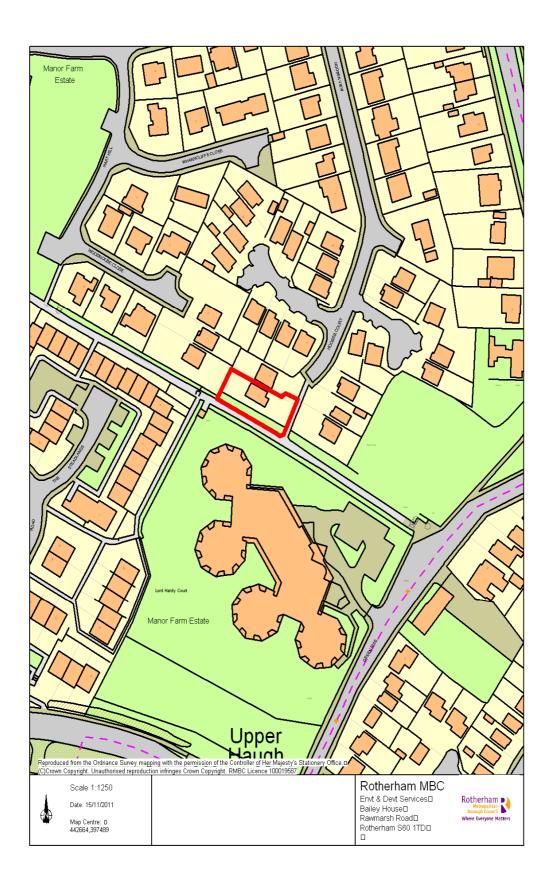
Item 4 RB2011/0404 Ref:

Appeal Decision – Allowed

Retrospective permission for raising rear garden 300mm and erection of new front boundary wall at No.11 Hoober Court, Rawmarsh for Mr. G. Watson

Recommendation

That the Planning Inspectorate's decision to allow the appeal be noted.



Background

The application site is located within a residential area of Rawmarsh. No.11 Hoober Court is a two-storey detached dwelling which is located at the cul de sac of Hoober Court. The application site shares the private access with No.12 Hoober Court, the original land level to the rear of the site is approximately 500 mm higher than No.12.

A planning application was received on 15 March 2011 to seek planning permission for raising the land level of rear garden by 300mm and erect a new boundary wall to front. The application was subsequently refused under Delegated power on 29 June 2011 for the following reason:

01

The Council considers that the already completed land raising in the rear garden of this residential property, by virtue of the 300mm increase to the boundary with No.12 Hoober Court, will significantly impact upon the amenities of the occupiers of that dwelling by virtue of direct overlooking to both the private rear garden and conservatory. As such it is considered the proposal contrary to Policy ENV3.1 'Development & the Environment' of the adopted Unitary Development Plan.

An appeal was lodged with the Planning Inspectorate on 7 September 2011.

Inspector's Decision

The Inspector considered that the main issue was the effect of raising the rear garden level by 300mm on the living conditions at No.12 Hoober Court in terms of privacy in the rear garden and conservatory.

The Inspector noted Nos. 11 and 12 Hoober Court are detached houses in a generally residential area. The rear garden of the former is elevated above that of the latter, and a trellis-topped fence divides the two. Notwithstanding the doubts expressed, from the site visit the Inspector concurred with the Council that the application describes the amount (300mm) that the land has been raised by with sufficient accuracy and noted work has already been carried out.

From the raised garden, the trellis-topped boundary fence is very low. It allowed clear views over much of the neighbouring property's (No.12 Hoober Court) rear garden and into its rear conservatory. The Council has put forward a condition requiring the erection of a 1.8 metre high fence along the boundary between the raised land and No.12. Indeed, on the Inspector's site visit, it is noted that such a fence has already been erected. It comprises close-boarded wooden fencing panels with gently curved tops rising to approximately 1.8 metres high set between concrete posts of a similar height. While it is possible to see the rear garden and conservatory of No.12 over this fence, such views are largely limited to glimpses above the lowest part of the curved panels when stood very close to it. In the Inspector's opinion, this fence restricted the degree to which the rear garden and conservatory can be

seen from the raised area to a reasonable and acceptable level. With it in place, the Inspector considered that the normal use of the rear garden of the appeal property would not result in an intrusion of privacy at the neighbouring home.

The Inspector acknowledged both the Council and the occupiers of No.12 have raised concerns about other effects of the fencing. However, the Inspector considered that it does not have a visually overbearing impact on the rear of No.12. While it is high in relation to that property's rear garden and conservatory, it is set back from the boundary, behind the trellis-topped fencing. Because of this, its presence is not visually intrusive. Moreover, the neighbouring rear garden is of a decent size and the conservatory is positioned away from the boundary, such that the presence of the fence is not excessively pervasive. As a consequence of the orientation of the properties and the elevated position of the fence, it would cause shadowing to some portion of the rear garden of No.12 and its rear conservatory during some part of the afternoon. However, the Inspector considered that it is unlikely that the extent of overshadowing or the periods for which it would occur would be so significant so as to warrant resisting the appeal. The impact in this regard would not be substantially different to that commonly experienced in situations where neighbouring homes are set on different levels, and would not be unacceptable.

The Inspector noted the occupiers of number 12 have also raised a number of other concerns, and have taken account of all the evidence. The Inspector agreed with the Council that the new front retaining boundary wall proposed does not harm the character and appearance of the neighbourhood. The materials used reflect those of the house and neighbouring homes, and it generally blends into the street scene.

The Inspector also dismissed the comments about other works undertaken by the appellant; drainage and safety of the stepped footpath as there was no compelling or detailed evidence to conclude a different view.

The Inspector also stated that the ownership of land was largely a private matter and sees no particular reason why it should be a decisive factor in the Inspector's decision in this appeal, which conveys only planning permission and no legal or other rights that may be necessary to undertake the development.

As such, the Inspector considered that raising the rear garden level by 300mm has not caused material harm to the living conditions at No.12 Hoober Court in terms of privacy in the rear garden and conservatory. As such, it would not conflict with broad aims of Policy ENV3.1 of the Rotherham Unitary Development Plan. This requires developments to make a positive contribution to the environment by achieving an appropriate standard of design having regard to the relationship to the locality, scale and height, among other things.

Conclusion

The Inspector concluded that the appeal should be allowed and planning permission is granted for the raising of the rear garden by 300mm and the construction of a new front retaining boundary wall, in accordance with the submitted plans in the planning application RB2011/0404 subject to a planning condition that the close-boarded fence erected along part of the side boundary with No.11 Hoober Court shall be retained at a height of 1.8 metres above the raised land level.

Item 5

Courtesy Consultation Procedures

Recommendation

That the contents of the report be noted.

Background

Members asked for a report setting out the requirements for neighbouring Authorities to consult each other in respect of planning applications submitted.

The statutory requirement for carrying out consultations in respect of planning applications (as opposed to carrying out publicity) is set out in Article 16 of Part 3 of The Town and Country Planning (Development Management Procedure) (England) Order 2010 (DMPO). Article 16 states:

"Before granting planning permission for development which, in their opinion, falls within a category set out in the Table in Schedule 5, a local planning authority shall consult the authority or person mentioned in relation to that category."

It adds that no decision on the application can be made until a period of 21 days after the consultation date and that the Local Planning Authority shall, in determining the application, take into account any representations received from a consultee.

Schedule 5 of the DMPO sets out all categories where consultation must take place before any planning application is granted, and paragraph (b) states that for: "Development likely to affect land in Greater London or in a metropolitan county other than land in a National Park", the relevant Local Planning Authority concerned should be notified. There is no definition as to what 'likely to affect land' actually means, and it is down to each Authority to interpret and implement this requirement.

Consultation of adjoining Authorities by Rotherham in respect of planning applications received is carried out on a case by case basis, and I am not aware that there have been any issues raised by adjoining Authorities over a lack of consultation, or indeed by Rotherham due to a perceived lack of consultation by an adjoining Authority. Should a Council member become aware of a proposed development in an adjoining Authority's area and consider that Rotherham Council should comment, they are advised to contact Development Management so we can discuss with the relevant adjoining Authority.

For information, when a Courtesy Consultation in respect of a planning application is received from an adjoining Local Authority, it is referred to the Planning Board where the proposal would have been reported to Board (under the Scheme of Delegation) had it been submitted in the Rotherham area. Any comments made by Members are forwarded to the relevant adjoining Authority for consideration.

Marr Wind Farm

Reference was made at the last Board to an application that had been granted and implemented for wind turbines at Marr in Doncaster. It has been established that the application related to the erection of 4 turbines, with a hub height of 80m and a blade tip height of 125m. This would compare with the 6 turbines proposed at Ulley which are also 80m to the hub, but 132m to the blade tip. The turbines in Doncaster are located to the south of the A635 between Hickleton and Marr, and would be approximately 5km from the Rotherham boundary at the nearest point (being Mexborough Road/Hound Hill Lane at Wath).

In view of the distance to the Rotherham boundary it is considered that any land or properties within the Borough would not be affected by the development, and that consultation with Rotherham was not, therefore, necessary in this instance.

Conclusion

Local Authorities will consult an adjoining Local Authority if it considers that a planning application is "likely to affect land" within that adjoining Authority. There is no advice or guidance as to how this is to be interpreted and it is, ultimately, down to the Local Authority to decide if an adjoining Authority should be notified.