To the Chairman and Members of the
PLANNING REGULATORY BOARD 18TH MARCH 2010

Report of the Director of Planning and Regeneration Service

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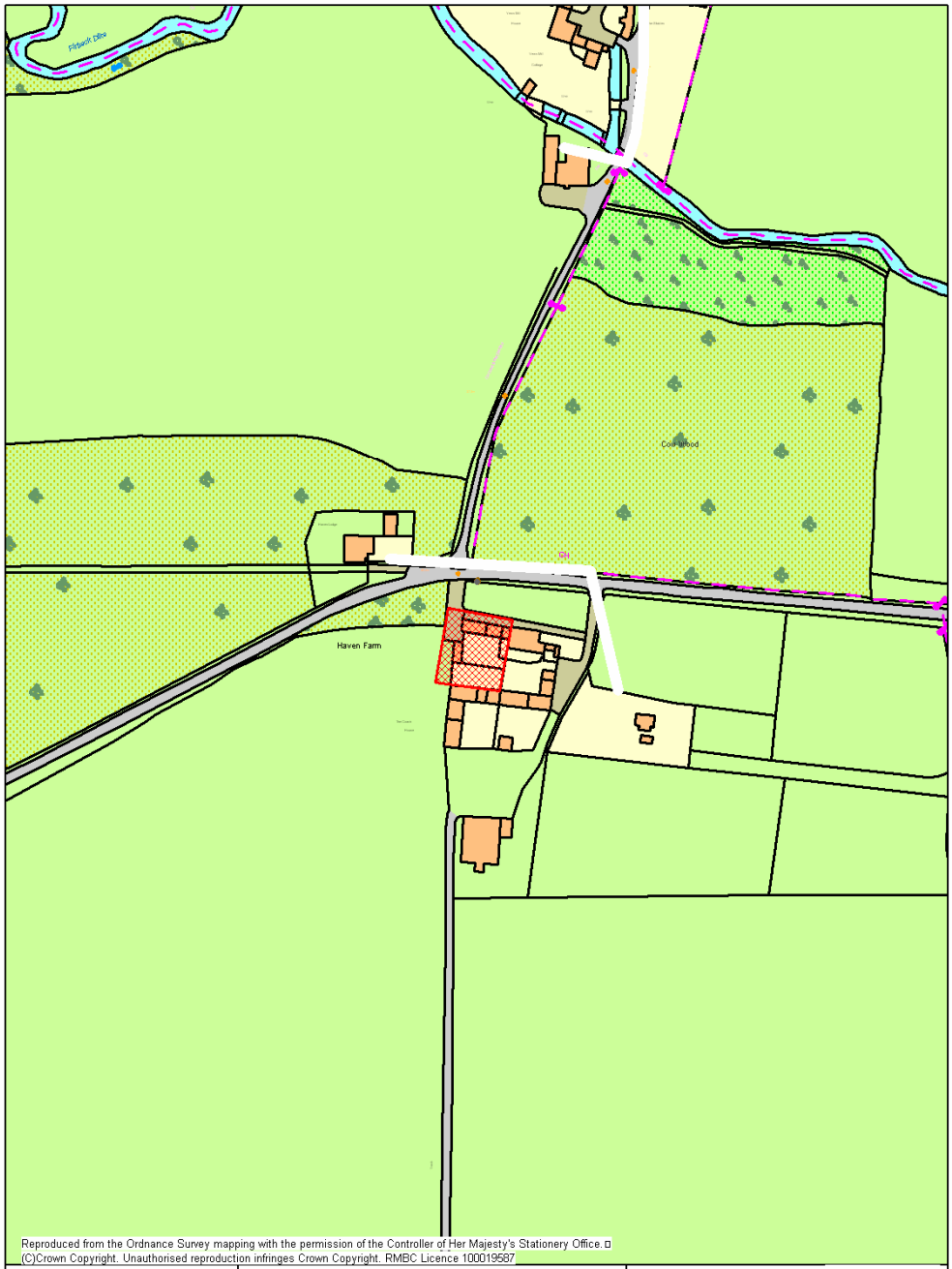
PLANNING AND REGENERATION SERVICE | REPORT TO COMMITTEE 18TH MARCH, 2010

Item 1 **Application No: RB2009/0902**

Appeal Decision – Dismissed
Application for lawful development certificate re: Proposed conversion and extension of Cow Shed to dwelling in accordance with RB2005/0047 at the Old Cow Sheds, Haven Farm, Lamb Lane, Firbeck

Recommendation:-

That the decision to dismiss the appeal be noted.



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Background

An application for conversion and extension of existing outbuildings to form a dwelling (RB2005/0047) was granted planning permission on 1 July 2005. This involved the erection of a link extension between the main barn and the cart store outbuilding and a further extension adjacent to the cart store. Upon the commencement of works the cart store collapsed leaving only the side and part of the rear wall standing. It was the Council's opinion at this time that the planning application could no longer be implemented as the building could no longer be converted.

An application for the demolition of the partially collapsed building and the erection of a single storey extension and conversion of existing outbuilding to form a dwelling was granted conditionally on 6 May 2008 (RB2007/1809). The proposal did not include the further extension adjacent to the cart store, and therefore, had a smaller overall floorspace.

This appeal relates to an application for a Lawful Development Certificate (RB2009/0902) which was refused on 29 September 2009. The Lawful Development Certificate was for the proposed conversion and extension of a Cow Shed to dwelling in accordance with application RB2005/0047. The application was refused under delegated powers for the following reasons:

"Rotherham Metropolitan Borough Council hereby certify that on 04 August 2009 the use described in the proposal in respect of the land specified in the site and shaded on the plan attached to this certificate would not have been lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason(s):

The conversion and extension of the outbuildings to form 1no residential dwelling as approved under applications RB2005/0047 could not be implemented due to the loss of one of the outbuildings to be converted. Therefore planning permission is required for the works.

Notes:

1. This certificate is issued solely for the purpose of section 191/192 of the Town and Country Planning Act 1990 (as amended).

2. It certifies that the use specified in the proposal taking place on the site described above would not have been lawful, on the specified date and, thus, would be liable to enforcement action under section 172 of the Act on that date.

3. This certificate applies only to the extent of the use described in the proposed and to the site specified above and identified on the attached plan. Any use which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.

4. The effect of the certificate is also qualified by the proviso in section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operation begun, in any of the matters relevant to determining lawfulness."

An appeal against this decision was submitted on 19 November 2009.

The Inspector noted the Council's position on the application in that planning permission (as granted under RB2005/0047 for the conversion and extension of outbuildings, including the cart store) could not be implemented due to the loss of one of the outbuildings to be converted. The site inspection revealed that all that remains of the cart store building is part of the northern end wall and a small section of the adjoining rear, western wall.

The Inspector noted that the appellant's case encompassed two counter arguments. Firstly it was argued that since the floor area of the cart store amounts to only 19.75% of the overall floor area it is de minimis. However the Inspector considered that de minimis means something that is too small a scale for the law to take account of it. The Inspector's opinion is that something that amounts to nearly a fifth of the overall floor area of a scheme, goes far beyond anything that might as a matter of fact and degree reasonably be considered so insignificant that it can be disregarded. Accordingly the Inspector rejected this argument.

The second argument made by the Appellants is that work to the cart store would be maintenance. The Inspector noted that certain operations are excluded form the definition of development by Section 55(2)(a) of the Town and Country Planning Act 1990. The carrying out of works for the maintenance, improvement or other alteration of any building that do not materially affect the external appearance of the building does not constitute development. But, that exclusion would not apply in this instance as the result of the works would be to construct a building where the greater part of the external walls and roof would be new.

Where such a larger part of the cart store has been demolished, in the Inspector's opinion what is proposed could not reasonably be considered to comprise the maintenance of that building. Even if it were intended to re-use the original materials, the result would not be a building which has been the subject of maintenance (or improvement or other alteration), but a substantially new building and one which, to a significant extent, simply did not exist at the date of the Lawful Development Certificate application. As a matter of fact and degree, the Inspector considered that the proposed operations would amount to 'rebuilding', which is a building operation for which planning permission is required.

In the Inspector's opinion, the cart store has been largely demolished. It would thus be incapable of conversion without substantial rebuilding. Building operations to rebuild the cart store do not fall within the ambit of the works authorised by planning permission RB2005/0047 and would themselves require permission. Consequently the Inspector concluded that as a matter of fact and degree that to continue with works already commenced and complete the details as approved under

RB2005/0047 would not fall within a category of lawful development identified by Circular 10/97.

Conclusion

The Inspector therefore concluded that the Council's refusal to grant a certificate of lawful use or development to continue with works already commenced and complete the details as approved under reference RB2005/0047 was well founded and that the appeal should fail. The applicants can, of course, carry out the conversion and extension approved under RB2007/1809 though this results in a smaller floor area than the conversion and extension under RB2005/0047.

Item 2 **Ref: RB2009/0112**

Appeal Decision – Appeal Dismissed

Appeal against refusal of conversion of bungalow to a two storey dwelling house including rear extension and attached garage to side at 180 Wickersley Road, Broom for Mr. G. Ryan.

Recommendation:-

That the decision to dismiss the appeal be noted.



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Background

Application RB2009/0112 was refused at Planning Board on 19 March 2009 for the following reasons:

01
The Council considers that the proposed development by virtue of its size, scale, mass, position and design would alter the appearance of the property creating an incongruous and over dominant feature in the streetscene to the detriment of visual character and appearance of area. As such it is contrary to UDP Policy ENV 3.1 - Development and the Environment and Supplementary Planning Guidance 1 - Householder Development.
02
The Council considers that the increase in roof height would result in the loss of stepped roof heights in a row of bungalows to the detriment of visual amenity in the streetscene therefore contrary to the provisions of the UDP Policy ENV3.1 'Development and the Environment' and Supplementary Planning Guidance 1- Householder Development.
03
The Council further considers that the conversion of a bungalow to a two storey house would have an unacceptable effect on the amenities of neighbouring properties by way of overshadowing, loss of privacy and overbearing impact contrary to Supplementary Planning Guidance 1 - Householder Development.

Main Issues

The inspector considered the main issues in this case to be the effect the proposed conversion on:

- *The character and appearance of the area around Wickersley Road and Bentfield Avenue, and*
- *The living conditions of the occupiers of neighbouring dwellings by way of light and outlook.*

Reasons

Character and appearance.

The Inspector concurred with the appellant that the area in the vicinity of the appeal property contains a mix of bungalows, dormer bungalows and two storey houses. However he considered that 180 Wickersley Road forms part of a short row of bungalows that have a unified appearance in this part of the road and the property occupies a prominent place in the streetscene owing to the configuration of Wickersley Road. He also considered that the slope and bend means that the property has a focal position within a row of bungalows on this side of the road and that the proposed conversion would result in the appeal property appearing out of scale in the streetscene to the west of the junction with Bentfield Road.

The Inspector stated that "there are a number of dormer bungalows in the vicinity, and the proposed first floor extensions at the front of the property would give the

appearance of a dormer bungalow. However, the scale of the extensions at the rear would necessitate a significant increase in apparent bulk and roof height. This in turn would result in the property being highly visible from the road, especially when viewed from the east above the roof of 25 Bentfield Avenue." In the Inspector's opinion, this would be "detrimental to the character and appearance of the area around this part of Wickersley Road and Bentfield Avenue, where the row of bungalows presents a low profile that steps down the hill in a largely uniform fashion."

The Inspector further considered that "whilst the appellant contends that the existence of landscaping breaks up the view of the bungalows, this is not the case for a significant part of the year when larger trees are bare and, in any case, there can be no guarantees that the landscaping will remain in place indefinitely." Therefore the Inspector concluded that the proposal would be "harmful to the uniformity of its immediate surroundings and to the appearance of the area, in conflict with the saved policy ENV3.1 and the advice in the Housing guidance section of the SPG of the UDP."

Living Conditions

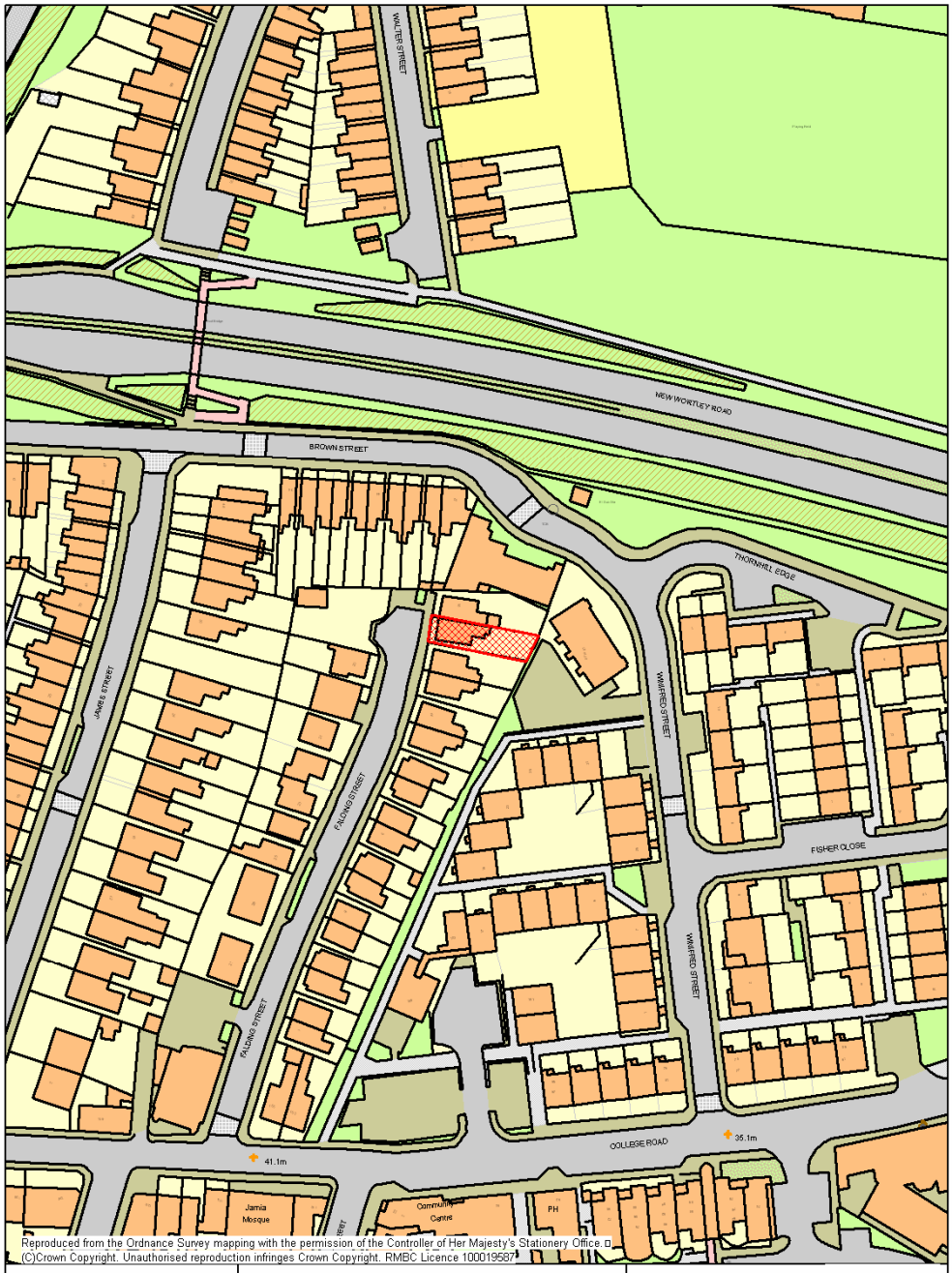
The Inspector did not consider that the proposal would result in any significant loss of light to 178 Wickersley Road and 23 Bentfield Avenue as they are situated north-east and north-west of the site. However he did consider that given the property is situated to the west and south-west of 25 Bentfield Avenue the significant increase in height and bulk of the proposed conversion would present an oppressive outlook to the occupiers of 25 Bentfield Avenue and could result in some loss of light to habitable rooms and private amenity space in that property and whilst this may be partially ameliorated by existing planting along the boundary, the overall effect is likely to be harmful to living conditions, in conflict with advice contained in the SPG.

Item 3 **Ref: EN2009/93UD**

Appeal Decision – Dismissed
Appeal against Enforcement Notice to demolish single storey rear extension at 17 Falding Street, Masbrough, Rotherham for Sajid Hussain

Recommendation:-

That the decision to dismiss the appeal be noted.



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Background

In March of 2009 the Council received complaints regarding the erection of a single storey rear extension at the above property.

The complainant alleged that the owners of the above property were erecting a single storey rear extension, the same in design and form to one previously refused planning permission on 19th December 2006 reference RB2006/2054.

A site visit by an enforcement officer confirmed that the owner of the above property a Mr Hussain was building the extension that he had previously applied for planning permission for and had been subsequently refused.

A letter was sent to Mr Hussain on 16th April 2009 requesting that all works to the extension should cease immediately and that the unauthorised extension be demolished.

Mr Hussein did not respond to the Council directly though Councillor Hussain contacted the Council on his behalf verbally. However, no assurance was given that the extension would be demolished.

Enforcement action was authorised by the Chairman and Vice Chairman on 30th July 2009 and the Enforcement Notice was served on Mr Hussain for the demolition of the extension on 28th August 2009, to which an appeal was lodged.

Inspector's Decision

I have now been informed that the appeal has been dismissed.

The Inspector noted that at the appointed time of his site visit the appellant was not present to permit access to the site. However, the Inspector was able to view the development from the rear garden of the adjoining house with the consent of the owner. The Inspector carried out the inspection without the owner or the Council's planning officer in attendance. The Inspector noted that he was satisfied that he saw all he needed to make a decision.

The Inspector considered the appellant's claim that the extension had been approved by the Council's Building Control section and by a planning officer. The Inspector considered that whether or not the extension has been approved for the purposes of the Building Regulations it does not relieve the appellant of the need to obtain planning permission where it is required. Secondly, the Inspector considered that no evidence had been submitted to substantiate the assertion that a planning officer visited the site and authorised the work. However, even if the Inspector were to accept that what the appellant alleges were to be correct, there is no authority for an officer of the Council to waive a requirement for the submission of an application for planning permission that is required as part of a statutory code; nor, in so doing, to bind the Council to a particular case.

The Inspector considered that the essential point, insofar as the appeal is concerned, is that whatever advice the appellant received, it cannot be held to prevent the Council from exercising its discretion to pursue enforcement action. The Council's ability to take such action simply cannot be fettered in this way.

The Inspector noted that the extension had not been completed, although the superstructure is largely in place. The structure has a height of 2.4m as measured on the boundary from the garden of No. 18 and extends almost to the rear corner of the common boundary between the appeal property and this neighbouring dwelling. The extension has already resulted in a substantial development on the party boundary with No. 18 Falding Street. The Inspector considered that the extension had significant impact on the use and enjoyment of their back garden by the residents of this house.

The Inspector contended that because of its position on the common boundary, allied to its length and height, the extension dominates the outlook from within No.18's back garden and creates an overbearing sense of enclosure. Further, considering the extension lies to the south of the boundary, he judged that at this time of year, when the arc of the sun is low in the sky, it does and would cause some overshadowing of No.18's garden during the late morning. The development has thereby made No.18 as a whole a much less pleasant place in which to live.

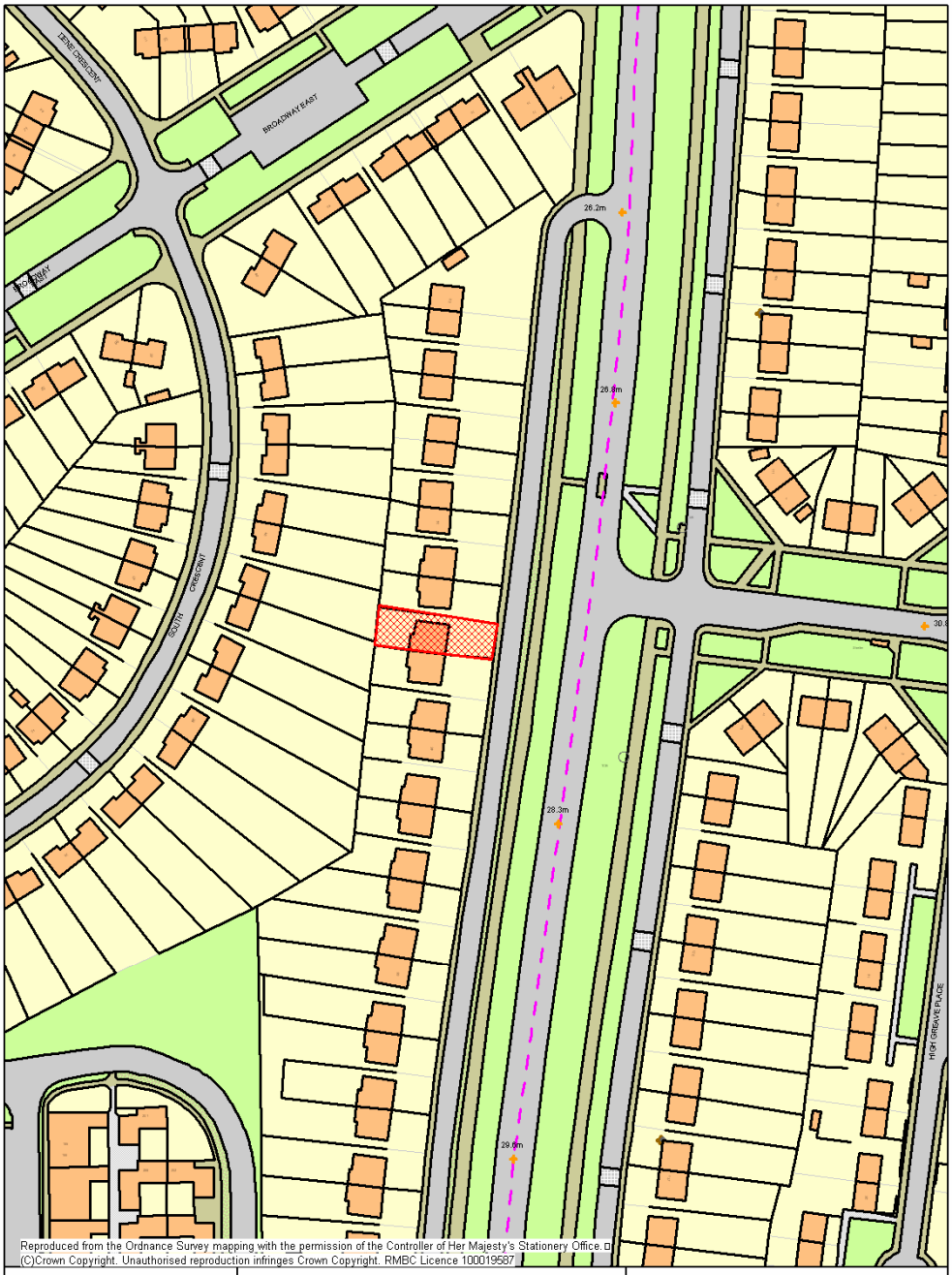
The Inspector concluded that the un-neighbourly impact of the extension harms the living conditions of the occupiers of No.18 by detracting from the use and enjoyment of the garden by its residents and is thereby unacceptable. As a result it fails in the Inspector's view to make a positive contribution to the environment, at odds with the aim of policy ENV3.1 of the adopted Rotherham Unitary Development Plan. In light of the above the appeal should fail on ground (a), and planning permission should not be granted for the development.

Item 4 **Ref: EN2009/93UD**

Appeal Decision – Dismissed
Appeal against Enforcement Notice to demolish front canopy extension at 40 Herringthorpe Valley Road, Rotherham S65 3RY for Robina Farooq.

Recommendation:-

That the decision to dismiss the appeal be noted with the Inspector varying the Enforcement Notice.



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Background

In October 2008 the Local Planning Authority was informed that a front canopy extension had been built at the above property.

A site visit by an enforcement officer confirmed that the occupier of the above property a Mrs Robina Farooq had built this front extension.

A letter was sent to Mrs Farooq requesting that she should apply retrospectively for planning permission for the development. No application was submitted.

A number of further letters were sent to Mrs Farooq, though she declined to apply for planning permission.

Enforcement action was authorised by the Chairman and Vice Chairman on 1st October 2009 and the Enforcement Notice was served on Mrs Farooq for the demolition of the front extension on 20th October, to which an appeal was lodged.

Reasons

The Inspector noted that no appeal was made on ground (f), which relates to whether the requirements of the Notice are excessive. However, the Inspector considered that it was appropriate nonetheless to consider whether the steps required to comply with the requirements of the Notice are excessive, and lesser steps would overcome the objections. The views of the parties were sought and the comments received have been taken into account. The Inspector was satisfied that there will be no injustice caused to either party if he considered this additional ground in determining the appeal.

The Inspector considered that the development which is the subject of the Notice is composed of 3 elements. First there is the raised brick platform or base which is about 1m in height. Four steps at the side lead up from the house driveway to the level of the front door. The base supports 3 brick columns about 2m high spaced equally along the front wall of the raised platform. The columns in turn support the deep mono-pitched, tiled roof which extends up to just below the cill level of the first floor windows.

The development extends across most of the front of the property, from the common party boundary with No. 42. However, the Enforcement Notice acknowledges, in effect, that this objection could be overcome by the imposition of a condition to prohibit the infilling of this largely open structure alongside the boundary with No.42. That was considered by the Inspector to be an appropriate way in which this aspect could be satisfactorily addressed.

The Inspector noted that the Council's second concern is with the effect of the extension upon the character and appearance of the surrounding area. That is a concern which the Inspector stated that he shared. The appeal property is a 2 storey semi-detached dwellinghouse with a modest ground floor bay window – a feature it shares with the neighbouring dwelling. This is the pattern of houses along

Herringthorpe Valley Road. However, the regularity of that pattern, which is a feature of the character of the area, has been significantly disrupted by the extension at the appeal property. Particularly as the large roofed area of the canopy projects well in front of the existing bay. In terms of its height, width and depth the Inspector considered that the canopy is a substantial feature, out of scale and out of keeping with the character of the host property. The Inspector concluded that it dominates the front elevation of the house and unbalances the appearance of Nos. 40 and 42.

The Inspector considered that the canopy roof and supporting columns are not only prominent from the service road, but also the main road. When viewed on approach from either direction the extension – or certainly this part of it – is an intrusive feature that materially detracts from the character and appearance of the surrounding area, contrary to policy ENV3.1 of the adopted Rotherham Unitary Development Plan. This is not a matter that can be addressed by a planning condition and it is an objection which the Inspector considered was sufficient on its own to justify rejection of the appeal.

The Inspector noted that he had viewed other front extensions referred to by the appellant in her appeal. He noted that he was advised by the Council that the porch at No.54 Herringthorpe Valley Road is unauthorised. The setting of the others all differ in my view, so that no direct comparison can be made with the instant case. In any event their existence does not justify the construction of a front extension which the Inspector considered to be harmful in its own right and contrary to local policy. The Inspector therefore concluded that the appeal would fail on ground (a), and planning permission should not be granted.

The Inspector went onto to consider whether or not the requirements of the Notice were excessive or not.

The Inspector noted that the raised platform supported 3 columns and the roof of the front canopy extension. The Inspector considered that the raised platform was not by itself an intrusive feature. The Inspector went on to note that from the main road it is hidden from view by the intervening hedge which runs alongside the service road. Its retention would not in the Inspector's opinion, undermine the amenity of neighbouring occupiers of No.42, nor would it adversely impact upon the surrounding area.

On this basis the Inspector considered that the first part of the requirement of the Notice was excessive and that the lesser step of demolishing the roof of the front canopy extension and the 3 supporting columns would satisfactorily remedy the injury to amenity which has been identified. To this extent the appeal on ground (f) succeeds and the Inspector substituted the lesser requirement which is outlined below.

Inspector's Decision

The Inspector directed that the Enforcement Notice be varied by the deletion of the requirement at section 5 of the notice and the substitution of the following requirement:

“Demolish the mono-pitched roof of the front canopy extension and, in their entirety, the 3 columns supporting the roof and remove from the land all the materials resulting from the demolition”.

Subject to this variation the Inspector dismissed the appeal, upheld the Enforcement Notice, and refused the grant of planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Inspector concluded that the un-neighbourly impact of the extension harms the living conditions of the occupiers of No.18 by detracting from the use and enjoyment of the garden by its residents and is thereby unacceptable. As a result it fails in the Inspector’s view to make a positive contribution to the environment, at odds with the aim of policy ENV3.1 of the adopted Rotherham Unitary Development Plan. In light of the above the appeal should fail on ground (a), and planning permission should not be granted for the development.