

155. Members' Requests for Site Visits

None.

156. Application CH/17/073, Enforcement Investigation – 64 New Penkridge Road, Cannock, WS11 1HW.

Following a site visit consideration was given to the report of the Development Control Manager (Item 6.1 – 6.73 of the Official Minutes of the Council). As the complainant was not available to attend the meeting the Committee were not able to view the recently constructed property from the complainant's property.

The Development Control Manager read out the following statement in order to make the particulars of the case clear to the Committee:-

“This case was initially presented to Planning Committee on 20 June 2018 when it was resolved that a site visit be undertaken by the Committee in order to enable the Committee to view the newly built property from both the complainants property and the application site so that a more informed judgment could be made.

Although a site visit was undertaken on 11th June the committee did not visit the complainant's property, a fact that was brought to Committee's attention at the subsequent meeting. As such at the meeting of Planning Committee held on 11th July 2018, it was resolved to defer consideration of the report so that

(A) A further site visit be undertaken by the Committee in respect of the Enforcement Investigation related to 64 New Penkridge Road, Cannock (Application CH/17/073): Residential development, erection of a five bedroom detached house. The site visit to be undertaken prior to the meeting of the Committee scheduled for 12 September, 2018.

Reason:

To fully comply with the resolution of the Committee made on 20 June, 2018, concerning this matter (Minute no. 15 refers).

(B) An independent person be appointed by the Council to undertake new measurements of the application site for consideration by the Committee.

Reason:

To provide the Committee with measurements of the application site produced independently of any previous measurements undertaken by the complainant or applicant.

Following, a range of delays to accommodate the requirements of the complainant and the owner of the property, to accommodate other cases and to seek Counsel opinion on matters of law, both parties were notified that the case would be presented to Planning Committee on 15th May. The complainant has advised the Council that the date is not convenient for him as his representative is not available to speak. However, representations from both the complainant and the owner are included in the report.

Given that the complainant has not made arrangements for Planning Control Committee to enter his property, Members must satisfy themselves that they have sufficient information in order to make a full and reasonable assessment of the case.

In order to help Members drawings have been provided which show the dwelling as approved, as built and a composite showing one drawing superimposed on top of the other so that the differences can be more easily seen.

The site and its surroundings are described within section 2 of the officer report and the policy implications are set out in section 3.

The substantive issues in respect to the determination as to whether it is expedient to take enforcement action are set out in section 5 of the officer report and are: -

- (i) whether there are discrepancies between the drawing of the dwelling as shown in the plans approved under planning permission CH/17/073 and the drawing of the dwelling as-built, and if so,
- (ii) if there are any differences the extent of those, whether they are material and whether they cause material harm or adverse impacts on amenity when compared with what was approved, and
- (iii) whether the conditions attached to planning approval CH/17/073 would equally apply to the dwelling as-built.
- (iv) How the situation can be remedied.

Members should be clear in their minds that this is not a planning application and that the only matters relevant to the case are those set out above.

The discrepancies between the drawing of the dwelling as shown on the plans approved under planning permission CH/17/073 and the drawings of the dwelling as-built are set out in paragraphs 5.2.3 of the officer report and can be seen by comparing the drawings in the appendices.

Members' attention is also drawn to the caveats and issues that arise when comparing two sets of drawings. However, notwithstanding these caveats, a comparison has to be made and this is the best way of illustrating the differences.

Whether the differences are material and whether they have caused material harm or adverse impacts on amenity is set out in section 5.3 of the officer report.

Members should note that there is no statutory definition of what constitutes a change being 'non- material'. This is because whether a change is material or non-material depends on the context of the overall scheme-an amendment that is non-material in one context may be material in another.

Members are also advised that the two interests that could be potentially impacted on by any difference in the dwelling 'as-built' as compared to 'as-approved' are the impact on the character of the area and the impact on residential amenity. Assessments in respect to these interests are set out in the officer report.

Having had regard to all of the above it is considered that the differences between the dwelling 'as-approved' and 'as-built' are so trivial that they do not cause any adverse impact on the amenity of the occupiers of the adjacent properties.

In looking at how the situation can be remedied Members are advised that the matter has been referred to Counsel for a legal opinion.

Following Counsel opinion Members are advised that should they conclude that the differences are trivial so that they are non-material and have had no material adverse impact on amenity the applicant could be invited to submit an application under section 96A of the Town and Country Planning Act 1990 (as amended) for the approval of non-material changes to the planning permission. This would ensure that the conditions attached to planning permission CH/17/073 would continue to remain in force.

Given the trivial nature of the discrepancies it is officer's view that they are non-material and hence would recommend that Planning Control Committee resolves to invite the owner of 64 New Penkridge Road to make an application under section 96A to seek to obtain consent for a non-material amendment to Planning Permission CH/17/073 to ensure that the conditions attached to the planning approval continue to apply.

Other issues raised by the complainant are set out in section 6.1 of the officer report. However, Members are advised that these issues do not have a material bearing on the matter that is on front of Planning Control Committee.

CONCLUSION

The substantive issue in this case is whether the building 'as-built' materially differs from that 'as-approved' under planning permission CH/17/073. It is clear from an examination of the approved plans and the independent drawings commissioned by the Council of the dwelling 'as-built' that there are a number of differences when compared to the approved drawings.

However, having had regard to the size, scale and nature of the differences within their immediate and wider contexts it is considered that they are so trivial as to be non-material and furthermore would cause no material harm or adverse impacts on amenity. This being the case it is concluded that the situation could be satisfactorily remedied by inviting the owner of 64 New Penkridge Road to submit an application under Section 96A for a non-material minor amendment to planning permission CH/17/073. Subject to such an approval the situation would be remedied and the conditions attached to the original planning permission would still remain in force.

The other issues raised by the complainant do not alter the above conclusion”.

Following this and prior to consideration of the application representations were made by Mr. John Heminsley (applicant’s agent) and Mr. Michael Smyth (applicant’s Solicitor) who were both speaking in favour of the application on behalf of the applicant.

A Member considered that it would be appropriate for a site visit to be undertaken from the complainant’s property. In response the Principal Solicitor commented that Members should consider what they would gain from visiting the complainant’s property. She advised Members that when the Committee originally agreed to undertake a site visit at No. 66 New Penkrudge Road at the Planning Control Committee held on 20 June, 2018 the information and drawings from the independent architect were not available. She confirmed that all of the relevant issues have been included within the officer’s report along with the representations from both the complainant and the owner of the property and the independent architect’s drawings. She agreed that there were differences between the as-built’ property and the ‘as-approved’ property but these were considered non-material. She asked the Committee to consider whether they could determine the application today with the information that was available to them.

In response to a question from a Member the Development Control Manager confirmed that should the Committee approve the Officer’s recommendation the applicant would be invited to submit a planning application under Section 96A of the Town and Country Planning Act 1990 for a non-material change to planning permission CH/17/073. This would be an amendment to the original application and it would not be necessary for an application to be submitted to the Planning Control Committee for approval; it would be determined by officers under their delegated powers.

RESOLVED:

(A) That the owner of 64 New Penkrudge Road be invited to submit a planning application under Section 96A of the Town and Country Planning Act 1990 for a non-material change to planning permission CH/17/073.

(B) That subject to such an application being submitted no enforcement action be taken.

157. Application CH/19/076, Dental Practice, 18 Burntwood Road, Norton Canes, Cannock, WS11 9RE – retention of roller shutter to secure shopfront

Following a site visit consideration was given to the report of the Development Control Manager (Item 6.74 – 6.84 of the Official Minutes of the Council).

The Development Control Manager advised that should Members be mindful to approve the application there was a condition attached to the approval to ensure the roller shutter was finished in a matt white colour.

RESOLVED:

That the application be approved subject to the conditions contained within the report for the reasons stated therein.

158. Application CH/18/403, 31 Market Square, Rugeley, WS15 2FA, Change of use of first and second floors from A2 (bank) to Large-scale HMO (Sui Generis)

Consideration was given to the report of the Development Control Manager (Item 6.85 – 6.107 of the Official Minutes of the Council).

Prior to consideration of the application representations were made by David O'Connor, the applicant's agent, speaking in favour of the application.

RESOLVED:

That the application be approved subject to the conditions contained within the report for the reasons stated therein.

159. Application CH/18/405, 31 Market Square, Rugeley, WS15 2FA, Listed Building Consent – works to facilitate the conversion of first and second floors to HMO comprising predominantly stud-walling (retrospective)

Consideration was given to the report of the Development Control Manager (Item 6.108 – 6.113 of the Official Minutes of the Council).

RESOLVED:

That the application be approved subject to the conditions contained within the report for the reasons stated therein.

160. Proposed Amendment to the Local Protocol for Planning Decision Making for Officers to request site visits on Planning Applications, Tree Preservation Orders and Enforcement Cases

Consideration was given to the report of the Development Control Manager (Item 6.114 – 6.116 of the Official Minutes of the Council).

Prior to consideration of the application the Development Control Manager circulated an update to the Committee which advised that Paragraph 2.2 of the report should be amended and the word "Committee" should be inserted after the words "the Chairman or in their absence the Vice-Chairman of the" in paragraph 7.8 (i).

RESOLVED:

That Council be recommended to amend paragraph 7.8(i) of the Local Protocol for Planning Decision Making as follows:-

"7.8 Inspections can be made to sites which are the subject of planning applications, TPO's or enforcement cases in the following circumstances:

- (i) When officers recommend an inspection in advance of producing a report so that if the Chairman or in their absence the Vice-Chairman of the Committee agrees the inspection can take place on the day the Committee meets to consider the report on the application.

The meeting closed at 4.10pm.

CHAIRMAN