

Revocation Order report for information only

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| Portfolio: | n/a |
| Ward(s) Affected: | Parkside |

Purpose: Notification of intention to revoke planning permission 21/0732/FFU for a double and single storey front extension at Birchwood, Golf Drive, Camberley GU15 1JG to correct procedural errors

Recommendation

The Planning Applications Committee is advised to NOTE the contents of this report

1. Background

- 1.1 This planning application (21/0732/FFU) for a double and single storey front extension was registered on the 28 June 2021. A copy of the application drawings and photographs are appended. This site lies within the Wooded Hills Character Area. This part of Golf Drive is a single-track road.
- 1.2 On the 28 July 2021 Councillor Hawkins emailed the Council requesting that the planning application be reported to committee, if the officer recommendation was to support the application. Valid planning reasons were given for the call-in and the call-in request was made in time. However, this call-in request was not forwarded to the case officer.
- 1.3 On the 25 August 2021 this application was granted planning permission under delegated powers. This was clearly contrary to the call-in request. A procedural error was made as the councillor email was missed.
- 1.4 A further procedural error occurred, as on review of the officer's report following determination it was evident that none of the objection letters received had been considered as part of the planning application.
- 1.5 Notwithstanding the errors made, all the relevant material planning considerations were taken into account including the impact upon the character of the area and residential amenities when the decision was made.
- 1.6 Given the errors highlighted above, officers are proposing to revoke the planning permission and further details are outlined below under section 3.

2. Action taken to date

- 2.1 As a consequence of these two procedural errors the following steps have already been taken:
 - The call-in procedures have been amended so that there are further checks in place. Rather than emailing individual officers a central call-in

inbox has been set up for councillors to use. All councillors were informed about this change on the 2 September 2021.

- On the 8 September an apology letter was sent to all neighbours who objected to the proposal.
- On the 14 September 2021 a meeting was held with concerned residents to discuss the planning merits of the proposal and whether any further action could be taken.
- More thorough checks are in place so no objections letters are missed when assessing planning applications.

2.2 Despite this action, the residents are dissatisfied that due process has not been followed. As it currently stands the residents could complain to the Local Government Ombudsman (LGO), after exhausting the Council's Complaint's Process. The Council's swift action to apologise and prevent a reoccurrence in the future would weigh in favour of the Council with any LGO assessment. Nevertheless, there may be compensation payable for the procedural errors made. This depends on whether the LGO considers that the procedural errors have caused harm to the residents.

2.3 In the alternative, the residents could seek a Judicial Review of the decision. This route would clearly be more costly to the Council given the necessity for advocacy and reputationally could be more damaging to the Council.

3. Revocation of Planning Permission

3.1 This next section of the report outlines the revocation procedure for of the planning permission which has been granted consent.

3.2 Section 97 of the Town and Country Planning Act (TCPA) enables a local planning authority to revoke or modify a planning permission 'to such extent as they consider expedient' with regard to the development plan and any other material considerations. However, the Act does not define the test of expediency.

3.3 In order to start the process of revocation officers would first write to the applicant explaining our intention to revoke and request a response in writing as to whether they oppose the revocation.

3.4 In the event that the applicant opposes the revocation then under s.98 of the TCPA, the revocation order cannot take effect unless it is confirmed by the Secretary of State. The Council would need to serve notice to the applicant that the order has been submitted to the Secretary of State. This notice would provide at least 28 days from serving the notice and explain that the Secretary of State may give an opportunity for a government appointed Inspector to consider the case. Following any necessary hearing the Secretary of State may confirm an order either without modification or subject to modifications as deemed expedient. The Secretary of State also has the power to directly

revoke planning permission himself under s.100 of the Act. There is also a right to challenge an order confirmed by the Secretary of State in the High Court, within six weeks of it being made.

- 3.5 If the revocation was unopposed by the applicant, then under s.99 of the TCPA a revocation order could be made following a press advert for at least 28 days from the time it is publicised and subject to notifying the Secretary of State. The applicant would then be at liberty to submit a further planning application which would then be reported to Planning Applications Committee and follow the correct process (Planning application 21/0799 reported on this agenda has followed this procedure).

4. Financial risk

- 4.1 An opposed order could still result in financial cost, similar to a planning appeal. However, this would again depend on whether advocacy was required and whether it was a hearing.
- 4.2 Under s.107 of the Act there is also liability for the local authority to pay compensation for abortive expenditure and for any other loss or damage directly attributable to the revocation. Abortive expenditure, could include expenditure on preparation of plans for the purposes of works. For example, plans for the Building Control process. In the event, therefore, that the applicant has paid for contractors or works had commenced then this could result in compensation. To date, no works have commenced on site but it is important to start the revocation process as soon as possible, to prevent this scenario.

5. Conclusion

- 5.1 The case officer who recommended approval is no longer working at the Authority. The officer recommendation to approve the application was a very much an on- balance decision and if the application had been reported to committee, then councillors may have come to a different conclusion and refused the application.
- 5.2 Given that revocation orders are rarely opposed it may be that the applicant accepts the situation. Even in the event that the applicant opposes the case and the Secretary of State intervenes then the government appointed Inspector would have full regard to the planning merits, and this would be akin to a s.78 planning appeal. Challenging the revocation order, therefore may not be in the applicant's interest, given that there is a chance that the Council could still allow the planning application at committee. If refused the applicant could still then appeal in the normal way.
- 5.3 However, serving a revocation order would clearly be in the public interest given the representations received and given that not all representations were taken into account in the decision-making process. This action would in all likelihood prevent a complaint to the LGO as the public would feel that they have been given a fair hearing, whatever the outcome.

5.4 Officers therefore conclude that in the circumstances revoking the permission is the correct course of action.

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| Annexes | 21/0732 application drawings and photographs |
| Background Papers | None |
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