

Appeal Summaries for Cases Determined 01/01/2011 to 31/03/2011

Application No: 09/01712/CLU
Appeal by: Mr John Gates
Proposal: Lawful Development Certificate for the existing use of an outbuilding to the rear of 22 Mill Lane as a retail shop (Class A1)
Site: 22 Mill Lane □ Wigginton □ York □ YO32 2PX □
Decision Level: DEL
Outcome: DISMIS

The main issues were (1) whether the retail sales constituted an independent retail shop or were merely incidental to the butchery business on the site and (2) if the premises did include an independent retail shop whether the use abandoned when or since the business ceased in 1986. □ □ As regards Q1 the inspector concluded that, on the balance of probability, the use as a shop and meat preparation business had subsisted continuously for at least 10 years prior to the business ceasing in 1986. □ □ As regards Q2 the inspector assessed the case against the four tests established by the courts: (1) physical condition of the building (2) the period of non-use (3) whether there had been any other intervening use and (4) evidence of the owner's intentions. The inspector considered that the fourth test was the most critical in this instance. He said that in his judgement very strong evidence of intention not to abandon the use of the premises was required given the extended period during which they were not used. He found that "The evidence before me is insufficient to demonstrate anything beyond aspirations over the longer term. Accordingly, on the basis of the period of vacancy and the lack of persuasive evidence of a real intention to resume the use within a particular or identifiable period, I agree with the council that the use which I have found was lawful was abandoned". The appeal was dismissed.

Application No: 10/00044/FUL
Appeal by: Mr S Hargreaves
Proposal: Two storey pitched roof detached dwelling on land between North Moor and Foxglove Cottage
Site: Nursery □ Moor Lane □ Bishopthorpe □ York □ YO23 2UF □
Decision Level: DEL
Outcome: DISMIS

PINS accepted that Wright Assoc had made an error in submitting the planning application in their own name and that Mr S Hargreaves was the applicant and is now, therefore, the appellant. □ AC 22 10 10

Application No: 10/00258/FUL
Appeal by: Mr Ahmed Karbani
Proposal: Two storey rear extension with balcony, two storey extension to front incorporating porch, alterations to roof, with gates, brick piers, wall and railings to front (resubmission)
Site: 34 Eastward Avenue □ York □ YO10 4LZ
Decision Level: COMM
Outcome: ALLOW

The application was for extensions to what is a modest semi-detached property and the erection of a front boundary enclosure comprising a wall/railings/gates. The extensions involved a part single/part two storey front extension and part single/part two storey rear extension. □□The proposal had generated local opposition and as a result had been called to Committee. It was recommended for approval by officers and was overturned by the Committee on the grounds of: visual impact of the wall, railings and brick pillars on streetscene; and, adverse impact of the extension at the rear on the attached property, 36 Eastward Avenue, in terms of loss of light and overshadowing. □□The Inspector in allowing the appeal and granting planning permission for the alterations, concluded that: whilst the front boundary enclosure, at 1.5m high, was at the limit of acceptability, its appearance of undue enclosure was mitigated by visibility through the railings and gates; and that impact of the rear extension on light and outlook was limited by being set in from the boundary and the presence of the neighbour's conservatory.

Application No: 10/00507/LBC
Appeal by: Mr Andrew Ratcliffe
Proposal: Retention of a suspended ceiling on the ground floor
Site: 35 Micklegate □ York □ YO1 6JH
Decision Level: DEL
Outcome: DISMIS

The appeal related to a refusal of retrospective Listed Building Consent in respect of the insertion of a gridded suspended ceiling based on an aluminium frame to the lower floor sales area and ancillary facilities. The property is Grade 11* Listed 2 1/2 storeys dating in part from the 17th Century but with late 18th Century additions including the main street frontage. □ The Listed Building Consent application was previously refused on the grounds that the ceiling by virtue of its design, materials and impact upon the proportions of the internal space would give rise to a jarring and discordant impact upon the character and appearance of the Listed Building. The applicant whilst acknowledging that the work had been undertaken without Consent contended that it had in all probability been done by the previous occupier. He also contended that a ceiling of the type inserted was necessary for the efficient operation of the business at the site and that this counter balanced any harm to the character and appearance of the building and that furthermore any works could easily be reversed. The inspector challenged each of these arguments in turn, pointing out that the decision to insert the ceiling had not been undertaken on the basis of a proper evaluation of the historic merit of the interior. The needs of the business were acknowledged as a material consideration of some weight however it was pointed out that the works went beyond what was necessary for that reason and by the applicant's own admission they were not undertaken with that purpose in mind. It was acknowledged that the works were reversible but that the degree of harm caused and the fact that they were clearly intended to be permanent in nature afforded this consideration only very limited weight. The appeal was then dismissed.

Application No: 10/00520/FUL
Appeal by: Mr Steve Wilkinson
Proposal: Change of use from restaurant (class A3) to mixed use comprising delicatessen and hot food takeaway
Site: 71 Micklegate □ York □ YO1 6LJ □
Decision Level: DEL
Outcome: DISMIS

The application was refused because of the impact on the amenity of living conditions of nearby residents and the effect on the vitality and character of Micklegate. The previous use of the property and 69 Micklegate as a restaurant /cafe led the inspector to conclude there would be no significant impact on the vitality of the area given there would be no loss of retail premises as such. □ □ However he maintained the Council position in relation to the impact on local amenity, referring to the 30 residential properties within 50 m of the site. The impact on the character of the conservation that a takeaway use would have was also cited as a concern in dismissing the appeal.

Application No: 10/01203/FUL
Appeal by: Mr Stuart Arnott
Proposal: Single storey rear extension to existing detached granny annexe
Site: 3 School Lane □ Copmanthorpe □ York □ YO23 3SQ □
Decision Level: DEL
Outcome: ALLOW

The proposal was to extend an existing approved granny annexe, which already had a bed-sitting room/kitchen and bathroom. It was proposed to further extend this to provide 2 bedrooms, with separating sitting room/kitchen, to house an elderly relative and carer, though no justification was provided in this respect. The site lies within the Conservation area, though the building is not highly visible to public view. The resulting footprint was larger than the original footprint of the dwelling, thus was not considered to be ancillary. However the Inspector considered that it would not harm the character of the Conservation Area, and as it would not be possible to use as a separate dwelling due to the layout of the garden, then it was considered acceptable and allowed the appeal.

Application No: 10/01212/FUL
Appeal by: Ms Lorraine Avery
Proposal: Two storey pitched roof side extension
Site: 11 East Way □Huntington □York □YO31 9ET □
Decision Level: DEL
Outcome: DISMIS

The appeal relates to a two-storey side extension to a detached suburban property. The extension was proposed to abut the rear garden of the adjacent corner property (9 East Way). Although 9 East Way has no habitable room windows facing the site of the proposed extension, its rear garden is very small (around 8.5m long). It was considered that because of its scale and proximity the extension would be overbearing when occupiers used the garden. □□The Inspector agreed that despite the lack of objections from neighbours the proposed extension would appear oppressive when viewed from the garden. Although not stated as a reason for refusal she also felt it would be detrimental to the outlook of the dwelling.

Application No: 10/01260/FUL
Appeal by: Mr And Mrs Keith Dronfield
Proposal: Single storey pitched roof rear extensions
Site: 13 Grange Street □York □YO10 4BH □
Decision Level: DEL
Outcome: DISMIS

Summary □□The application comprised of a monopitched roof extension adjacent with the shared (eastern) boundary of the dwelling at 11 Grange Street together with a further single storey extension on the shared (western) boundary with 15 Grange Street. The application site an end - terrace property with rear access via a lane running along the back of the dwellings. □□The reason for refusal was the height and proximity the extension on the eastern boundary closest to the dwelling at (no.11), resulting in an unduly oppressive and overbearing impact on the occupiers of the adjacent property with loss of light, amenity and outlook when viewed from ground floor windows. □□The Inspector concluded that height of the proposed extension above the boundary wall would remove the sense of openness and the additional enclosure would have an over bearing impact on the outlook from the neighbours window. However, the inspector disagreed that the extension would incur a loss of light. Appeal dismissed.

Application No: 10/01305/FUL
Appeal by: Mr R Gorwood
Proposal: Detached single storey dwelling with access from Old Moor Lane (revised scheme)
Site: Land On Corner Of Tadcaster Road And Old Moor Lane York
Decision Level: COMM
Outcome: DISMIS

Proposed single storey house on a landscaped, grassed area between flats and the road, to the se of grade 2 listed aldersyde house. The existing building layout was aligned with the listed building, setback from the road and the buildings of similar massing. The location of the proposed house and its height (single storey) meant it would appear out of place and contrary to the urban grain. As such there would be visual harm. There would also be a harm to residential amenity, as the building would be 10m from living room windows on the nearby flats.

Application No: 10/01515/ADV
Appeal by: Mr Aidan Lewis
Proposal: Display of non-illuminated lettering signs to south-east (front) and south-west (side) elevations
Site: 28 - 40 Blossom Street York YO24 1AJ
Decision Level: DEL
Outcome: DISMIS

It was proposed to add applied lettering on the front and side of the premises (Premier Inn Hotel). The inspector ruled that the signage itself was of appropriate scale, materials and location. However there are already a large number of advertisements at the building, both internal and external. The decision was that cumulatively there would be a harmful impact on the conservation area setting. The appeal was dismissed.

Application No: 10/01548/FUL
Appeal by: Mr Tim Calam
Proposal: Raise eaves and ridge height of existing dormer bungalow to create additional first floor accommodation. Conservatory to rear and detached pitched roof garage to front (resubmission)
Site: Chapel Bungalow□10 Common Road□Dunnington□York□YO19 5NG□
Decision Level: DEL
Outcome: PAD

The application was refused because :-□□The increase in the height of the building at ridge and eaves level would, due to the enlarged size and massing of the structure and its proximity to the boundary, have an unacceptably overbearing impact on the occupiers of the adjacent residential dwelling at No.5 Greencroft Court and would dominate their rear outlook. This would be to the detriment of their amenity, contrary to policies GP1(i) and H7 (d) of the Draft City of York Local Plan.□□The Inspector agreed that raising the height of the ridge would adversely affect the amenity at No 5 Greecroft Court and dismissed this part of the appeal. However (unusually) the construction of the garage was allowed under this appeal rather than this element having to form part of a resubmission□

Application No: 10/01571/FUL
Appeal by: Mrs Mary-Ann Dearlove
Proposal: Conservatory to side after demolition of existing garage
Site: 26 East Mount Road□York□YO24 1BD
Decision Level: DEL
Outcome: DISMIS

This application sought permission for a small conservatory in timber construction with pyramidal shaped roof to be located off an original attached outshot to the rear; the host dwelling being sited at the end of the terrace adjacent to an area of public open space. East Mount Road has an article 4 direction on all properties for any extensions and is also located within the Conservation Area. The design of the conservatory was considered to be totally at odds with the existing well-ordered facade of the building, by introducing this modern addition. Though partially screened from public view, it was still considered it would cause harm to the appearance of the dwelling and surrounding Conservation Area.

Application No: 10/01798/FUL
Appeal by: Martyn Ellerker
Proposal: Replace and enlarge driveway
Site: 2 Walnut Close □ Haxby □ York □ YO32 3ZP □
Decision Level: DEL
Outcome: DISMIS

The application was refused on the basis of the potential for the new impermeable drive to contribute to surface water run flood risk in the local area. The Inspector noted that the area was susceptible to surface water flooding due to the underlying clay soil type. Although there are already adjacent areas of impermeable surface she concluded this proposal would exacerbate run off problems and so would conflict with national guidance regarding flood risk in PPS 25 and draft local plan policy GP15a which encourages sustainable drainage systems. The appeal was therefore dismissed

Application No: 10/01802/FUL
Appeal by: Peter Cole
Proposal: Detached garage to side with link wall to main house
Site: Beech Cottage □ Wheldrake Lane □ Crockey Hill □ York □ YO19 4SH □
Decision Level: DEL
Outcome: ALLOW

Summary □ □ The application related to a detached garage measuring 5.0 m long x 3.5m wide x 3.9m high, reducing to 2.4 at eaves height. The design included a link wall between the detached garage and the main house. The dwelling is located on Wheldrake Lane washed over by the City Of York Green Belt situated in a small cluster of residential dwellings. □ □ The dwelling as originally built had a footprint of approximately 46.8 square metres. The extensions that were approved in 1983 and 2002 added a further foot print of 44.6 square metres. In addition the property has an existing detached garage/workshop and attached store covering an area of approximately 23.9 square metres. □ □ The application was refused on the basis that the proposal would clearly represent a disproportionate increase in the size of the original dwelling, contrary to national planning advice in PPG2, and significantly greater than the guide figure of 25% referred to in Policy GB4 of the Draft Local Plan resulting in inappropriate development in the Green Belt. □ □ The Inspector agreed that the proposal along with the previous additions would result in a cumulative amount in excess of policy guidance, despite the fact that the Development Control Local Plan is not adopted. However, the opinion was taken that Policy GB4 reflected the approach of the policy guidance contained within PPG2. □ □ The Inspector considered that in view of the appellants fall back position of building a flat roof garage under permitted development, it was necessary to justify the visual appearance of the p.d garage and the increased size of the appeal garage as very special circumstances. □ □ The Inspector concluded that the visual harm to the Green Belt by building a less attractive building would out weigh the disproportionate increase in the size. Appeal allowed. □ □ No other conditions other than standard ones relating to the implementation materials are required. □ □ Sharon Jackson □ Development Management Assistant.

Application No: 10/01887/FUL
Appeal by: Mr Aasif Rabbani
Proposal: Timber fencing enclosure around single storey flat roof at rear of property (revised scheme)
Site: 20 Eastholme Drive □ York □ YO30 5SW □
Decision Level: DEL
Outcome: DISMIS

The application property is a 3 bed flat above a post office/shop in Rawcliffe. The application related to the erection of a 1.8m high timber fence around the roof of a flat roofed single-storey rear extension to create a large roof garden (approx 9m x 6m) for the adjacent first floor flat. Previously planning permission had been granted for an enclosure around an area approximately 3m x 6m. The application was refused for the following reason: □ □ "The proposal to erect 1.8 metre high, solid wooden fencing around the edge of the roof of the flat roofed extension would create an unduly dominant, incongruous and unsightly structure that would detract from the attractive open residential character formed by the landscaped gardens to the rear of Eastholme Drive. It is considered therefore that the proposed extension conflicts with policy GP1 (criterion a, b and i) and H7 (criterion a, b and d) of the City of York Draft Local Plan (fourth set of changes) approved April 2005." □ □ The Inspector agreed with the reason for refusal and did not feel that the benefit to the flat's occupants from the larger roof garden outweighed the harm that would be caused to the appearance of the area.

Application No: 10/01999/FUL
Appeal by: Mr Stuart Chisholm
Proposal: Two storey rear and side extension
Site: 3 Beech Grove □ Upper Poppleton □ York □ YO26 6DS □
Decision Level: DEL
Outcome: DISMIS

This application sought permission for a large two-storey side, two storey rear and single storey extension to this two-storey semi-detached dwelling to provide additional living space. The dwelling is sited within a cul-de-sac of largely unaltered dwellings, within generous plots, that as a whole make an important contribution to the surrounding Conservation Area. The submission was refused, by virtue of the scale, massing and siting, which would erode the setting of the house and unbalance the symmetry of the pair of dwellings. The inspector agreed, adding that the design of the two gabled roofs to the rear would create an awkward unbalanced appearance, causing harm to the appearance of the Conservation Area.

Application No: 10/02080/FUL
Appeal by: Mr Peter Wilson
Proposal: Conversion of garage into habitable space including replacement of garage door with windows
Site: 93 Princess Drive □ York □ YO26 5SX □
Decision Level: DEL
Outcome: DISMIS

This appeal was refused delegated powers due to highway issues relating to the parking and manouvering of vehicles. The application sought to convert the integral garage of this three storey town house into habitable accommodation thereby reducing the overall potential parking provision at the property to a single space, whilst increasing the number of bedrooms from three to four. (The existing property has 2 off street car parking spaces - one in the garage and one on the drive). The original consent for the development (Sovereign Park) contained a condition which prevented areas laid out for parking and manoeuvring of vehicles to be removed without consent due to the narrow frontages to individual units and limited scope for on-street parking. □ □ It was felt that the proposal would result in vehicles being parked outside the site on the public highway within the turning head of a cul-de-sac to the detriment of highway safety and free flow of traffic. It was also considered that approval of this development would be likely to set a as a precedent for other such conversions resulting in further pressure on the immediate highway network. □ □ The point was raised that the garage was never used for parking as the applicants only have one car, however the inspector agreed with the officer decision that such a reduction in off street parking would limit available visitor parking and also provide no flexibility should the circumstances of the occupier change. The inspector concluded that the combination of the narrowness of the turning head at the end of Princess Drive and any increase in on-street parking could significantly restrict vehicle turning and manoeuvring, as well as access to the parking spaces for the other town houses and flats served from this turning head. The appeal was therefore dismissed. □

Application No: 10/02142/FUL
Appeal by: C/o Agent
Proposal: Two storey side extension
Site: 1 Algarth Terrace □ Elvington Lane □ Elvington □ York □ YO41 4AS □
Decision Level: DEL
Outcome: DISMIS

The application was refused because almost the entire depth of the extension (approximately 6.5 metres) would be set forward of the front elevation of the adjacent dwelling named Gladstone. It was considered that this would create an awkward visual relationship and juxtaposition between the two properties, which would appear incongruous and detrimental to the streetscene. Additionally the proposed extension would significantly curtail the outlook from windows at Gladstone and would have an unduly dominant and overbearing impact on the property, and would detract from the amenity that the occupiers of the property could reasonably expect to enjoy. □ □ □ The inspector concluded that the impact of the development close to the boundary and Gladstone would not create a suitable transition between the properties and the extension would not be subservient to the host property, and so would be visually harmful within the locality. He therefore dismissed the appeal. However he was less convinced that the harm to residential amenity would have been sufficient to dismiss the appeal alone. □

Application No: 10/02331/FUL
Appeal by: Mrs Sue Barnes Wilson
Proposal: Erection of boundary wall to front
Site: 23 Greengales Lane □ Wheldrake □ York □ YO19 6BW □
Decision Level: DEL
Outcome: ALLOW

The application was refused the proposed wall as a result of its length, height, design and materials, would appear as an unduly imposing and incongruous feature that would be out of character with the local pattern of front garden boundaries within Wheldrake, which generally consist of low walling and vegetation. □ □ The Inspector agreed that the wall would have a significant visual effect but argued that the site, and the adjacent property at 25 Greengales Lane, had a separate character to the rest of the nearest properties in the village. He concluded that the proposal would be more closely associated with the similar wall and railings at No 25 and so would not be unduly incongruous or imposing in the locality. Nor would this set a precedent for similar boundary treatment which would need to be judged on their merits. □

Decision Level:

DEL = Delegated Decision

COMM = Sub-Committee Decision

COMP = Main Committee Decision

Outcome:

ALLOW = Appeal Allowed

DISMIS = Appeal Dismissed

PAD = Appeal part dismissed/part allowed