

Planning Committee

Appeal Decisions

The following decisions have been made by the Planning Inspectorate on appeals arising from decisions of the City Council:-

Application Number	Planning Compliance Case 12/01858/OPR
Appeal Site	31 Hirmandale Road, West Park, Plymouth, PL5 2JZ
Appeal Proposal	Appeal against a planning enforcement notice seeking the demolition of a substantial unauthorised garden building (double garage) and the restoration of the site to its condition as it existed immediately prior to the development having been carried out.
Case Officer	Christopher Watson
Appeal Category	Enforcement Notice
Appeal Type	Informal Hearing
Appeal Decision	Appeal Allowed, conditional planning permission granted.
Appeal Decision Date	20 October 2014
Conditions	Garage to be used for domestic purposes only ancillary to main dwelling and not for primary living accommodation ie not bedrooms nor living rooms.
Award of Costs	Full appeal costs awarded to appellant.

Appeal Synopsis

In October 2012 the Council's Planning Compliance Officers became aware that a large detached outbuilding had been constructed in the side garden of this two-storey semi-detached house in West Park without the required planning permission.

While the development met most planning policy and supplementary planning guidance criteria, it failed on one very significant ground, in as much as the building had been constructed within approximately 1.0 metre of the trunk of a very large mature oak tree that had been made the subject of a Tree Preservation Order in 2007. The Preservation Order had been made as a result of concerns that the owner of the property was intending to build in a way which would unreasonably, and harmfully, impact on the tree.

Although having been informed of the need for planning permission for the structure, the owner declined to seek retrospective planning permission for the building. After very careful consideration of the expediency of pursuing enforcement action, officers concluded that the development was wholly unacceptable in terms of its relationship with the protected tree, and issued a planning enforcement notice in March 2014 seeking the removal of the entire structure in order to protect the long-term health of the protected tree.

The owner appealed against the enforcement notice and an informal hearing took place before a Planning Inspector on 14 October 2014.

In his decision letter, the Planning Inspector, although apparently accepting that planning permission would almost certainly be refused if planning permission had been sought for the garage in advance, has allowed the appeal on the unusual basis that, in his view, the removal of the unauthorised structure may risk causing more harm to the protected tree in the long-term than allowing the development to remain, particularly given what he describes as the 'lack of care' taken by the applicant in carrying out the works, which he fears would be repeated if the garage were to be required to be removed.

Furthermore, the Planning Inspector has awarded full costs to the appellant on the basis that the Inspector considered that the Council should have given this unusual point significant weight, and not proceeded with enforcement action. The Inspector adding that the Council should also have taken into account that a hypothetical smaller scale repositioned development could have been carried out as 'permitted development' equally close to the tree, and that this also has heavily influenced his decision to award costs to the appellant. Both the appeal decision, and the costs award, are therefore very disappointing, given the circumstances that have led to the enforcement action in this case.

Note:

Copies of the full decision letters are available to Members in the Ark Royal Room and Plymouth Rooms. Copies are also available to the press and public at the First Stop Reception.