

The Planning Inspectorate

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Development & Environment
North Somerset Council
Fao: Moira Cullington
Somerset House
Oxford Street
Weston-super-Mare
BS23 1TG

Your Ref: 05/P/1664/F
Our Ref: APP/D0121/A/05/1194368
Date: 26 June 2006

Dear Sir/Madam

**TOWN & COUNTRY PLANNING ACT 1990
APPEAL BY ASHWOOD HOMES (SW) LTD
SITE AT 24 SHRUBBERY RD, WESTON-SUPER-MARE, AVON, BS23 2JH**

I enclose a copy of our Inspector's decision on the above appeal.

The attached leaflet explains the right of appeal to the High Court against the decision and how the documents can be inspected.

If you have any queries relating to the decision please send them to:

Quality Assurance Unit
The Planning Inspectorate
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Temple Quay House
2 The Square, Temple Quay
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Phone No. 0117 372 8252

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E-mail: Complaints@pins.gsi.gov.uk

Yours faithfully


Mrs Fiona Dunn

COVERDL1

NORTH SOMERSET COUNCIL	
DECISION BY THE PLANNING INSPECTORATE	
Reference No.	
Received Date	28 JUN 2006
Category	
Sub Area	



Appeal Decision

Hearing held on 23 May 2006

Site visit made on 23 May 2006

by **Richard Thomas BA, Dip Arch, RIBA, IHBC**

an Inspector appointed by the Secretary of State for
Communities and Local Government

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Date
26 JUN 2006

Appeal Ref: APP/D0121/A/05/1194368

24 Shrubbery Road, Weston-super-Mare, North Somerset, BS23 2JH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Ashwood Homes (SW) Ltd against the decision of North Somerset Council.
- The application Ref.05/P/1664/F, dated 1 July 2005, was refused by notice dated 22 September 2005.
- The development proposed is the demolition of existing building and erection of a detached building containing 14 residential apartments, associated car parking (16 spaces), cycle parking, refuse storage and landscaping.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Main Issues

1. The appeal site lies the within the Birnbeck Conservation Area, and I consider that the main issues in this case are the impact of the proposed development upon, firstly, the character and appearance of the conservation area and, secondly, upon highway safety in the surrounding area.

Planning Policy

2. The development plan includes the North Somerset Local Plan (2000), which contains policies that seek to protect conservation areas and highway safety (Policies CON/13 and T/11 respectively). The thrust of these policies is carried forward in The North Somerset Replacement Local Plan Second Deposit Draft (2004). This has been subject to public inquiry and is at an advanced stage of its adoption, and I am therefore able to attach significant weight to the relevant emerging policies (Policies ECH/13 and T/10)

Reasons

Conservation Area

3. The Birnbeck Conservation Area extends from the sea-front at the north end of Weston Bay up the south face of Worlebury Hill. It contains a number of large hotels and boarding houses near the sea-front and numerous Victorian villas arranged along the narrow roads that wind up and across the hillside. These villas range in scale from modest two-storey terraced dwellings to substantial four storey houses, all situated in relatively close proximity to their neighbours. Although varied in style, with an eclectic mix of Tudor, gothic and Italianate detailing, the villas are generally characterised by the use of coursed rubble limestone for the external walls, with dressed stone used for detailing to door and window openings, quoins and string courses, set beneath slate roofs, many with decorative barge boards. The area also benefits from extensive mature tree planting in the relatively generous
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garden space created by building lines set well back from the pavement, together with a number of small public parks and open spaces set amongst the houses.

4. Overcombe is a two storey house that extends across the full width of the appeal site and behind No.24A Shrubbery Road, a former coach house serving Overcombe. The house is relatively well concealed behind the trees and the mature shrubbery situated along the front boundary, with only the upper parts of the roof and chimneys being generally visible from the road and surrounding areas to the north.
5. The ridge line of the proposed development would be slightly higher than the chimneys of the Overcombe and thus would be slightly more prominent than the existing roof in views from the north. It would, however, be narrower than the existing building, and its height and width would be generally similar to that of combined width of the two houses previously approved by the Council (Ref.01/P/2165/F). In terms of the wider street scene, it would also be similar or lower in height than Nos.20 and 22 Shrubbery Road.
6. I note the Council's argument that the proposed development would be unacceptably bulky in comparison with the approved scheme where, it was argued, the gap between the two houses would reduce their apparent bulk. I saw that such gaps are evident elsewhere in the conservation area, but noted that the often narrow gaps did little to reduce the visual impact of the bulky Victorian villas on either side. However, I also saw examples of three and four storey villas with wide frontages, including that on the nearby corner of Tower Walk and Shrubbery Road. Within this varied context and in view of the generous width of the site in comparison to those within the conservation area in general, I consider that the proposed development would not be unacceptably bulky or massive in this particular location.
7. The apparent bulk of the proposed building would be further reduced by the use of bays at either end of the main elevation, with a projecting central section surmounted by a pair of gables. These features, together with the use of vertically grouped windows of decreasing scale would reflect the proportions and rhythms that characterise the neighbouring Victorian villas. In addition, I saw that the existing front garden is effectively concealed from view by the trees and extensive mature shrubbery along the front boundary, which would be retained as part of the landscape planting for the proposed development and would conceal cars parked within the site from public view. As a consequence, I consider that the proposed development would preserve the character and appearance of the conservation area and thus conform to both Policy CON/13 and emerging Local Plan Policy ECH/13.

Highway Safety

8. Local Plan Policy T/13 requires the provision of 2 parking spaces per dwelling. However, since its adoption in 2000 this aspect of the Local Plan has been superseded by the advice in Planning Policy Guidance Note 13 *Transport* (PPG13), which advocates that development in areas well served by public transport should not provide more parking than the developer is willing to provide, unless there are compelling reasons.
9. The appeal site is in an area which is well served by public transport and within walking distance of the town centre. The proposed development would provide 16 parking spaces and a cycle store within the front garden area, accessed from a widened existing driveway. The Council agrees that this would provide 2 more car parking spaces than the maximum required in the Schedule to emerging Policy T/6, which reflects current government planning policy guidance. However, in view of the relatively narrow roads in the surrounding area and the subdivision of many Victorian villas leading to considerable

demand for on-street parking during the evenings and week-ends, I consider that such an overprovision would serve to minimise any impact of the proposed development upon highway safety and amenity in the surrounding area, without undermining the objectives of emerging Local Plan Policy T/6, which seeks reduce car dependency. I therefore conclude that the proposed development would conform to Policy T/11 and emerging Policy T/10.

Other Matters

10. I note representations from The Euston Trust objecting to the granting of conservation area consent (Ref.01/P/2167/CA) for the demolition of Overcombe, in conjunction with a previously approved proposal for its replacement with a pair of detached houses. However, the extant consent does not form part of this appeal, and is therefore not before me for consideration.
11. I also note concerns expressed by interested parties about the loss of wildlife habitat as a result of the proposed development. However, the proposed building would not take up a significantly different site area from that currently occupied by Overcombe and, during my site inspection I noted that the proposed car parking area would be sited on area of overgrown lawn and driveway. Since the existing extensive mature trees and boundary shrubbery to the front and rear of Overcombe would be retained and enhanced, I consider that there would be little significant change in either the scale or character of the wildlife habitat within the appeal site as a result of the proposed development.
12. Unlike Overcombe, the proposed building would have no windows on the side elevations, apart from windows serving bedrooms on the lower ground floor. However, these would be at or below existing ground level and the proposed 1.8m high boundary fencing would be adequate to prevent the occupiers of these bedrooms overlooking adjoining properties, especially to the west.

Conditions

13. I have considered the conditions suggested by the Council in the light of the advice contained in Circular 11/95. I have imposed the standard implementation condition, together with a condition requiring the completion and retention of the car and cycle parking provisions, in the interest of highway safety.
14. In order to preserve the character of the conservation area I shall require the proposed development to be constructed in accordance with the approved plans, including further details of the windows and facing materials to be used in its construction. For similar reasons, I shall attach conditions to require the implementation of an approved landscaping scheme and to prevent the demolition of Overcombe until a contract has been let for the replacement building.
15. The Council's archaeological officer has not requested any form of excavation or watching brief during any construction work on site and I therefore consider that it is not necessary to attach any such condition, or to require the retention of salvaged fixtures or fittings, as was suggested by interested parties at the hearing.
16. The appellant has entered into a unilateral undertaking under s106 of the Act to provide contributions towards the cost of providing additional public open space and education facilities, library services and community/youth services in order to accommodate the impact of the proposed development upon existing services. The Council confirmed that these payments would satisfy the relevant Local Plan and emerging Local Plan policies in

respect of such provisions, and I have had regard to the undertaking in my consideration of this appeal.

Conclusions

17. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Formal Decision

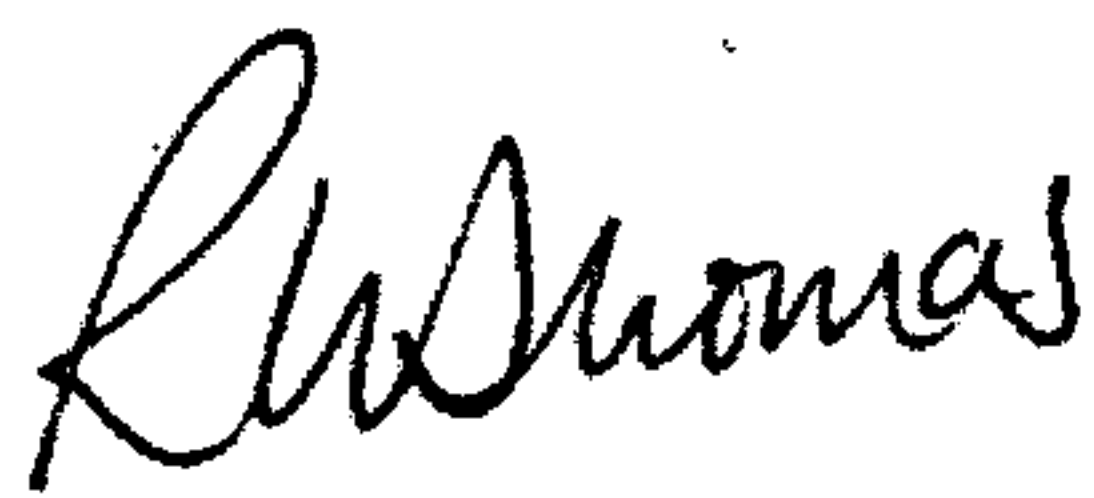
Appeal Ref: APP/D0121/A/05/1194368

18. I allow the appeal, and grant planning permission for the demolition of existing building and erection of a detached building containing 14 residential apartments, associated car parking (16 spaces), cycle parking, refuse storage and landscaping at 24 Shrubbery Road, Weston-super-Mare, North Somerset, BS23 2JH in accordance with the terms of the application, Ref.05/P/1664/F, dated 1 July 2005, and the plans submitted therewith, subject to the following conditions:

- 1) The development hereby permitted shall begin before the expiration of five years from the date of this decision.
- 2) The works of demolition hereby authorised shall not be carried out before a contract for the carrying out of the works of redevelopment of the site has been made on which work is to commence within 3 months or such longer period that may have been agreed in writing by the local planning authority.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Notwithstanding the submitted plans, no development shall take place until large scale details of the windows and decorative stonework to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) Prior to the erection of any external walls, a sample panel of external walling and pointing at least 1.0m square shall be constructed and approved in writing by the local planning authority and this panel shall be kept on site throughout the construction period. Development shall be carried out in accordance with the approved sample panel.
- 6) The ridge height of the building hereby approved shall not exceed the dimensions shown on the approved plans.
- 7) None of the apartments hereby granted planning permission shall be first occupied until the vehicle access, driveway, turning area and parking spaces, including the cycle parking/storage areas, have been constructed in accordance with the approved drawings and are available for use. Once provided, the said access, turning and car and cycle parking spaces shall not thereafter be used for any alternative purpose.
- 8) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping, which shall include

indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.

- 9) No development shall take place until all trees, shrubs and hedgerows identified as to be retained in the approved landscaping scheme have been protected by chestnut paling fencing erected at the full extent of crown spread. The erection of fencing for the protection of any retained trees, shrubs or hedgerows shall be undertaken before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the local planning authority.
- 10) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.



INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Fran Chick CSJ Planning, 1 Host Street, Bristol
Roger Evans Angus Meek Partnership
Craig Smith CSJ Planning, 1 Host Street, Bristol

FOR THE LOCAL PLANNING AUTHORITY:

Neil Underhay Principal Planning Officer, North Somerset District Council
MA, MRTPI
Michael Schneider Team Leader, Transportation, North Somerset District Council
DipTP, MRTPI

INTERESTED PERSONS:

Cllr Robert Payne 19 Old Bristol Road, Weston-super-Mare, BS22 6DA
Cllr J Crockford-Howley Town Hall, Weston-super-Mare
Paul Redding 4 Beechcroft Mansions, 20 Shrubbery Road, Weston-super-Mare, BS23 2JH
Terence Ewing 9c Lawn Road, London, NW3 2XS
John Hartland Parklands, Tower Walk, Weston-super-Mare, BS23 2JR
Jill Turner Garden Flat, 9 Shrubbery Road, Weston-super-Mare, BS23 2JJ

DOCUMENTS

Document 1 List of persons present at the hearing
Document 2 Notice of the hearing
Document 3 Bundle of letters received in response to hearing
Document 4 Unilateral Undertaking by Newridge Developments Ltd dated 23 May 2006
Document 5 Architect's comparison elevations and photographs
Document 6 Extracts from Inspector's Final Report on Replacement Local Plan
Document 7 Statement by Cllr. Crockford-Howley

PLANS

Application plans:
Plans A 1758 L01, 001B, 002D, 003B, 004E, 005D, 006C, 007C, 008E and 307/01A



The Planning Inspectorate

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An Executive Agency in the Office of the Deputy Prime Minister and the National Assembly for Wales

Challenging the Decision in the High Court

Challenging the decision

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

Different appeal types

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

Challenges to planning appeal decisions

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

Challenges to enforcement appeal decisions

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

Important Note - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Frequently asked questions

"Who can make a challenge?" – In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land - other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this – see Further Information).

"How much is it likely to cost me?" - An administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees – see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Further information about challenging the decision

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655; Website: www.courtservice.gov.uk

Inspection of appeal documents

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

Council on tribunals

If you have any comments on appeal procedures you can contact the Council on Tribunals, 81 Chancery Lane, London WC2A 1BQ. Telephone 020 7855 5200; website: <http://www.council-on-tribunals.gov.uk/>. However, it cannot become involved with the merits of individual appeals or change an appeal decision.

Contacting us

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The Parliamentary Ombudsman

Office of the Parliamentary
Commissioner for Administration
Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0845 0154033

Website: www.ombudsman.org.uk

E-mail: opca-enqu@ombudsman.org.uk





The Planning Inspectorate

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An Executive Agency in the Department for Communities
& Local Government and the National Assembly for Wales

Our Complaints Procedures

Complaints

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-open an appeal to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly-held.

The Quality Assurance Unit works independently of all of our casework teams. It ensures that all complaints are investigated thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms. We aim to give a full reply within three weeks wherever possible. To assist our investigations we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

What we will do if we have made a mistake

Although we aim to give the best service possible, there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future. Minor slips and errors may be corrected under Section 56 of the Planning & Compulsory Purchase Act 2004 but we cannot amend or change in any way the substance of an Inspector's decision.

Who checks our work?

The Government has said that 99% of our decisions should be free from error and has set up an independent body called the Advisory Panel on Standards (APOS) to report on our performance. APOS regularly examines the way we deal with complaints and we must satisfy it that our procedures are fair, thorough and prompt.



INVESTOR IN PEOPLE

Taking it further

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary Commissioner for Administration (often referred to as The Ombudsman), who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

"Can the decision be reviewed if a mistake has happened?" – Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision. This can only be done following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

"So what is the point of complaining?" – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

"Why did an appeal succeed when local residents were all against it?" – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds whether these views justify refusing planning permission.

"What do the terms 'Allowed' and 'Dismissed' mean on the decision?" – 'Allowed' means that Planning Permission has been granted, 'Dismissed' means that it has not.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have submitted.

"I wrote to you with my views, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

"Why did my appeal fail when similar appeals nearby succeeded?" – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

"I've just lost my appeal, is there anything else I can do to get my permission?" – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can submit a revised application to the council. Talking to its planning officer about this might help you explore your options.

"What can I do if someone is ignoring a planning condition?" – We cannot intervene as it is the council's responsibility to ensure conditions are complied with. It can investigate and has discretionary powers to take action if a condition is being ignored.

Further information

Each year we publish our Annual Report and Accounts, setting out details of our performance against the targets set for us by Ministers and how we have spent the funds the Government gives us for our work. We publish full statistics of the number of cases dealt with during the preceding year on our website, together with other useful information (see 'Contacting us'). You can also obtain booklets which give details about the appeal process by telephoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or on the Department for Communities & Local Government website - www.communities.gov.uk

Contacting us

Complaints & Queries

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The Parliamentary Ombudsman

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Website: www.ombudsman.org.uk

E-mail: opca-enqu@ombudsman.org.uk