

## Appendix B

Appeal by Mr Brian Taylor

Single Storey side extension at 9 Bower Farm Road, Old Whittington, Chesterfield.

CHE/19/00151/FUL

2/2150

1. The appeal concerned the None Determination of an application for a single storey side extension at 9 Bower Farm Road, Old Whittington. The appellant also sought a full award of costs against the Council.
2. The appeal has been determined by the written representation appeal method and has been allowed however the cost claim has been refused.
3. The main issues are the effect of the proposed development on the character and appearance of the area.
4. The appeal building is a semi-detached property within a residential area. The area is characterised by similar properties, many of which have been extended and altered in differing ways. Although there is no strict building line, properties are generally set back from the road creating a pleasant open environment. The proposed garage would be positioned to the side of the host property and stepped back slightly from the front building line. Although it would be more than half of the width of the house, with a flat roof form it would appear subservient in scale to the main property. The inspector recognised that the parapet detailing adds to the height of the garage, however it would still be a small-scale extension overall. Moreover, the parapet and concrete coping stone finish would add an element of architectural detailing and interest into the design. Whilst the inspector recognised that a pitched or hipped roof could also be appropriate, he did not consider that the proposal would represent poor design.
5. Due to the orientation of the property, the proposed garage would project slightly at an angle towards the highway. As a result, the side elevation would be visible from Bower Farm Road, however this would be similar to the existing view of the appeal building from the street and would not appear intrusive.

The inspector did not consider there to be any harm from this relationship to the street. Moreover, the proposal would only be visible in close views along Bower Farm Road and opposite the site.

6. Elsewhere in Bower Farm Road and the surrounding residential streets, the inspector saw varying examples of garages, including those with flat roofs. He recognised that many of these may have been erected as permitted development and the Council advises that the structures do not appear to benefit from planning permission. Nonetheless, flat roofs are part of the character of the street scene and the proposed garage would therefore not appear out of context in that respect. Consequently, the inspector concluded that the proposed garage would not harm the character and appearance of the area and would accord with the requirements of policies CS2 and CS18 of the Chesterfield Borough Council Core Strategy 2011-2031 adopted 2013. These policies are, amongst other things, concerned with the character and appearance of developments.
7. The inspector also found no conflict with paragraph 3.8.19 of the Council's Supplementary Planning Document titled Successful Places, (SPD). This SPD provides guidance on the design of new homes including, amongst other things, garages which the SPD says should not be visually intrusive. The inspector also found no conflict with section 12 of the National Planning Policy Framework and, in particular, paragraphs 124, 126, 128 and 130 which broadly seeks to secure high quality design.

### **Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location and Block Plans Drawing No 01-00, Existing Plans Drawing No 03-00 Existing Elevations Drawing No 04-00, Proposed Plans Drawing No 11-00 and Proposed Elevations Drawing No 21-00.

3) The materials to be used in the external surfaces of the extension hereby permitted shall match those used in the existing building.

### Costs Award

8. The application for an award of costs has been refused.
9. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG indicates that local planning authorities (LPAs) are at risk of an award of costs if they behave unreasonably by delaying development which should clearly be permitted, having regard to its accordancy with the development plan, national policy and any other material considerations.
10. The application was not determined by the Council. The PPG indicates that, if an appeal against non-determination is allowed, the LPA may be at risk of an award of costs if the Inspector concludes that there were no substantive reasons to justify delaying the determination, and better communication with the appellant would have enabled the appeal to be avoided altogether. The applicant states that an extension to the 8-week target date for the application was agreed to the 20 June 2019. The appeal appears to have been submitted some 5 weeks or so after that date. From the evidence before the inspector the Council's final correspondence to the applicant's agent was on the 5 June 2019 seeking an extension to the determination date to the 20 June 2019. No further responses were provided to the applicant's agent subsequent emails. The inspector understood that the Council were assessing the additional information provided by the applicant's agent regarding other examples of flat roof garages within the area. However, there is no substantive evidence that the Council contacted the applicant to advise that this assessment was being undertaken, provide an explanation for the delay or seek agreement for an additional extension of time. The inspector recognised that the application was submitted without the benefit of pre application discussions and the Council did appear to initially

engage positively with the applicant during the application. However, the inspector did consider that the Council behaved unreasonably in significantly delaying the determination of the application after the 20 June 2019, without explanation for the delay.

11. The inspector understood that the Council's failure to determine the application may have been frustrating for the applicant. However, based on the evidence submitted by both parties as part of the appeal, it is reasonable to conclude that further communication between the applicant and the Council during that period would not have overcome the matter in dispute. As such, although the Council were unreasonable in so far as delaying a decision on the planning application, the inspector concluded that an appeal would have been avoided if a decision had been made by the Council. Consequently, the Council's substandard communication with the applicant's agent, whilst unreasonable behaviour, did not in itself cause wasted expense in the appeal process.
12. The inspector recognised that the Council and the applicant's agent had discussed the potential for amending the roof form and this option appeared to have been left open. If amended it would have appeared from communication that the Council would have approved the scheme. Although I recognise that there had been a lack of communication, it was, nonetheless, the applicant's choice not to amend the scheme but to lodge an appeal based on the flat roof design. In terms of the substantive matters, the applicant's appeal submission sought to specifically address the issue in dispute which related to the flat roof form of the garage as previously identified by the Council during communication. The inspector summarised the matter in dispute within the main issue in the appeal decision, being the effect of the development on the character and appearance of the area. The Council's statement of case sets out that if the application had been determined it would have been refused for a single reason that is complete, precise, specific and relevant to the application. It refers to conflict with policies CS2 and CS18 of the Chesterfield Borough Council Core Strategy 2011-2031 Adopted 2013 (CS), paragraph 3.8.19 of the Council's Supplementary Planning Document titled Successful Places, and the design guidance within the National Planning Policy Framework (the Framework).

13. It will be seen from the appeal decision, that in allowing the appeal he found no harm with respect to the effect of the development on the character and appearance of the area. However, such a conclusion arises from matters of judgement on a subjective issue relating to the proposal's impact, relative to CS policies, the SPD and taking account of the Framework. Consequently, irrespective of the outcome of the appeal, The inspector could not find that the Council behaved unreasonably relative to the main issue in offering a different view to my own, given the subjectivity of the judgement made.
  
14. In conclusion, on the basis of the evidence before me, it has been demonstrated that the Council behaved unreasonably with respect to a procedural matter. However, in the particular circumstances of this case, the inspector was not satisfied that the unreasonable behaviour caused unnecessary or wasted expense for the applicant in the appeal process in so far as an award of costs could be justified. He therefore found that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.