

PART 1 - PUBLIC

- Info on legal proceedings

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**Decision Maker:** Renewal and Recreation Portfolio Holder

**Date:** For pre-decision scrutiny by the Renewal and Recreation PDS Committee on 27 March 2012

**Decision Type:** Non-Urgent Executive Non-Key

**Title:** **AUTHORISATION FOR FUNDS FOR DIRECT ACTION UNDER S178 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED), IN RESPECT OF LAND KNOWN AS HAMPTON HALL, 1A HOLBROOK LANE, CHISLEHURST, KENT BR7 6PE**

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**Chief Officer:** David Mark Bowen - Director of Resources

Bob McQuillan - Chief Planner

**Ward:** Chislehurst Ward

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1. Reason for report

The owner of the land has failed to take the action required to comply with an Enforcement Notice seeking removal of unauthorised roof windows. No information has been forthcoming to suggest that there is any intention to comply with the enforcement notice and harm is ongoing to the amenities of neighbouring properties. Authorisation was given at Plans Sub-Committee No.3 on 16 February 2012 for direct action and authority is now sought for funds.

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2. **RECOMMENDATION(S)**

- 2.1 Funds be authorised to proceed with direct action to comply with the extant enforcement notice for the following works:
- 1) Remove all those windows that have been inserted into the roof space of the dwelling that are shown edged red on the attached plan B (with the exception of the window in the western roof slope that has already been removed); and
  - 2) Reconstruct the roof and tile the resulting gaps left by the removal of the windows with tiles of a similar type and colour to those used on the remainder of the roof.

### Corporate Policy

1. Policy Status: N/A.
  2. BBB Priority: Quality Environment.
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### Financial

1. Cost of proposal: Estimated cost £25K
  2. Ongoing costs: Non-recurring cost.
  3. Budget head/performance centre: N/A
  4. Total current budget for this head: £N/A
  5. Source of funding: Officers will endeavour to recover the costs from the owner/occupier of the including attaching an automatic charge against the property if necessary.
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### Staff

1. Number of staff (current and additional): 2 Planning; 1 Enforcement; 1 Legal; 1 Admin
  2. If from existing staff resources, number of staff hours: 60
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### Legal

1. Legal Requirement: Statutory requirement.
  2. Call-in: Call-in is applicable
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected): The recommendation will allow the Council to take the necessary steps in order to rectify the breach of planning control, and remove the harm caused to local residents.
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? No.
2. Summary of Ward Councillors comments: N/A

### 3. COMMENTARY

- 3.1 The planning and enforcement history of the site can be summarised as follows:
- 3.2 Ref. No. DC/03/04270/FULL – Four bedroom detached house at land r/o 1-7 Holbrook Lane – Application subsequently withdrawn.
- 3.3 Ref. No. DC/04/03074/FULL - Detached four bedroom house with detached double garage and access driveway – refused.
- 3.4 Ref. No. DC/05/00492/FULL – Detached three bedroom bungalow with access driveway – refused
- 3.5 Ref. No. DC/05/00497/FULL – Detached two storey four bedroom house with detached double garage and access driveway – refused and subsequently allowed on appeal on 26<sup>th</sup> October 2005, followed by a correction notice issued on 11<sup>th</sup> November 2005.
- 3.6 The appeal (05/00497/FULL) was allowed, subject to conditions. In particular condition 7 states “Notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order amending, revoking or re-enacting this Order) no building, structure or alteration permitted by Classes A, B, C or E of Part 1 of Schedule 2 of the 1995 Order, shall be erected or made within the curtilage of building hereby approved without the prior approval of the Local Planning Authority.
- 3.7 On 26<sup>th</sup> January 2007 an enforcement notice was issued against the registered proprietor of the property for failing to comply with condition 7 of the permission by inserting 10 windows (roof lights) in the roof space of the property without the required approval. The registered proprietor subsequently appealed against the notice. On 2<sup>nd</sup> November 2007 the appeal was dismissed and the notice was upheld subject to a variation, which allowed four of the 10 windows.

The Planning Inspector found that although obscure glazing combined with permanently fixed closed windows for the remaining 6 windows would prevent overlooking, it would in his opinion lead to an unsatisfactory standard of accommodation where such windows would be the only source of daylight. The Planning Inspector felt that these measures would not address the harm identified. Moreover the Inspector found it necessary to remove the 6 windows as no “...lesser step would overcome the damage caused”. The Breach of Condition Notice requires the removal of the remaining 6 windows, which, with the exception of one skylight that has been removed, has not been complied with to date.

In 2009 the owner appealed against the Council’s refusal to regularise [the unauthorised windows]. The Inspector dismissed the appeal. He reached the same conclusion as the earlier Inspector, i.e. that the retention of the windows is not acceptable. He specifically discusses the potential for the windows to be fixed shut as a solution to the concerns, but concludes that this would also not be considered appropriate for bedroom windows “due to the need to maintain adequate ventilation and means of escape from upper floor level.”

- 3.8 On 7<sup>th</sup> May 2009, the Council successfully prosecuted the registered proprietor for failing to comply with the requirements of the notice. The registered proprietor was fined £5,000 plus a £15.00 Victim Surcharge and ordered to pay the Council’s costs in the sum of £2,785.00. The owner subsequently appealed to the Crown Court against the conviction and costs. The appeal was dismissed and he was ordered to pay additional costs.
- 3.9 In order to regularise the breach the Owner has submitted the following applications:
- Ref. No. 08/01443/FULL6 – 3 roof lights in north elevation - withdrawn

Ref. No. 08/01452/FULL6- 3 roof lights in north elevation - withdrawn

Ref. No. 08/03874/FULL6 – 3 roof lights in north elevation - refused

Ref. No. 09/00155/VAR - Removal of condition 7 (restriction of Permitted Development Rights) of permission granted at appeal under ref. 05/00492 - refused and dismissed at appeal

Ref. No. 10/00290/FULL6 - 2 windows in first floor western elevation RETROSPECTIVE APPLICATION – Declined to determine

Ref. No. 10/00421/FULL6 - 2 roof lights in the western elevation RETROSPECTIVE APPLICATION - Declined to determine

Ref. No. 10/00471/FULL6 – 2 roof lights in the southern elevation RETROSPECTIVE APPLICATION – Declined to determine.

Ref. No. 11/02959/FULL6 – 2 roof lights in southern elevation RETROSPECTIVE APPLICATION – considered on this agenda

- 3.10 Members authorised direct action at Plans Sub Committee in July 2010 in respect of the remaining 6 windows, however due to delays caused by issues concerning access to the site, an Ombudsman complaint (which found no fault on the part of the Council), and complications and difficulties in finding suitable contractors (now resolved), this action has not yet been implemented.
- 3.11 A site visit on 30 January 2012 revealed that one of the rooflights in the western roofslope has been removed and tiles reinstated. Due to this fact and the submission and refusal of a new planning application for two of the six rooflights, which were previously refused on appeal, it is considered appropriate to reconsider the previously authorised direct action for the remaining 5 windows.

#### **4. CONSIDERATIONS**

- 4.1 Although the Council previously declined to determine several applications in 2010 for the windows, this was on the basis of a relevant decision within the past two years as allowed by Section 70A of the Town and Country Planning Act 1990 (as amended) (“the Act”). Although there will be a right of appeal against the recently refused application for two of the windows, there is no reason to further delay taking enforcement action in this case, particularly in light of the fact that there have been numerous applications made in respect of the same windows, all of which have been refused by the Council and dismissed on appeal.
- 4.2 The material planning considerations including relevant policies and the circumstances of the site are not known to have changed since the previous decisions, which were clear and unambiguous, and there is no sound reason to delay action any further to rectify the ongoing breach. The owner of the property has been given significant time i.e. over 4 years, and opportunity to comply with the decisions but has declined to take any significant action to remedy the breach.

##### **Direct Action**

- 4.3 Section 178 (1) of the Act states that:

“Where any steps required by an enforcement notice to be taken are not taken within the period of compliance with the notice, the local planning authority may –

(a) enter the land and take those steps, and;

(b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so

4.4 In the event that the Council is unable to recover from the owner the reasonable expenses incurred for taking the steps required by the Notice, the Council can attach a charge to the land, thus ensuring full cost recovery and base rate interest on sale (Section 178 (5)).

4.5 Expenses recoverable under S178 of the Act constitutes an automatic charge and is therefore binding on successive owners of the land. The charge takes effect as from the date of the completion by the Council of the steps required to be taken by the notice.

4.6 The Council has previously received three quotes to carry out the necessary works. These ranged in price from approximately £6k to £25k. The more expensive quote has been provided by a specialist enforcement contractor who has a planning background and considerable experience in carrying out such works. Taking into account the particular circumstances of this case, it is considered that this experience and knowledge may be essential in order to ensure the effective resolution of the breach and it is recommended that the most expensive quote (as amended for 5 instead of 6 roof windows which would be equal or less than the previous quote) be accepted.

## 5 CONCLUSIONS

5.1 There is a long planning and enforcement history in relation to this matter. Funding agreement is requested for the direct action authorised at Plans Sub Committee on 16 February 2012.

## 6. POLICY IMPLICATIONS

6.1 The action recommended to rectify this breach is in order to meet the aims of Policy BE1 of the Unitary Development Plan, which requires that “development should respect the amenity of occupiers of neighbouring buildings and those of future occupants and ensure their environments are not harmed by noise and disturbance or by inadequate daylight, sunlight or privacy or by overshadowing.

## 7. FINANCIAL IMPLICATIONS

7.1 The estimated cost of the proposed works under S178 of the TCPA 1990 will be £25k.

7.2 Officers will endeavour to recover from the owner of the land all expenses reasonably incurred by the Council for carrying out the works, including registering a charge against the land if necessary.

## 8. LEGAL IMPLICATIONS

Fully addressed in the body of the report.

<b>Non-Applicable Sections:</b>	Personnel implications
Background Documents: (Access via Contact Officer)	Enforcement and Legal files containing exempt information as defined by Schedule 12a of the Local Government (Access to Information) Act 1985 are not available for public inspection