

PART 1 - PUBLIC

Decision Maker: Plans Sub Committee No.2

Renewal and Recreation Portfolio Holder

15th July 2010

Date:

19th July 2010

Decision Type:

Non-Urgent

Executive

Non-Key

Title:

APPLICATION FOR INJUNCTION UNDER S187B OR DIRECT ACTION UNDER S219 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 Legal Democratic and Customer Services

Bob McQuilan - Chief Planner

Ward:

Chislehurst Ward

1. Reason for report

- 1.1 The purpose of the report is to obtain authority to obtain an injunction order or take direct action against the owner of land known as Hampton Hall, 1A Holbrook Lane, Chislehurst, BR7 6PE, in response to the owner's continued failure to comply with an Enforcement Notice (Breach of Condition) dated 26th January 2007.

2. **RECOMMENDATIONS**

- 2.1 Members of Plans Sub Committee 2 are asked to support the proposed injunction action or direct action to ensure compliance with the Enforcement Notice.

- 2.2 The Renewal and Recreation Portfolio Holder is asked to approve direct action in order to achieve the steps required by the Enforcement Notice, namely:

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; 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.

2.3 Also in the event of direct action, to recover the reasonable costs incurred as a result of the steps taken by the Council to comply with the notice, or failing which, to attach an automatic charge to the land.

Corporate Policy

1. Policy Status: Existing policy.
 2. BBB Priority: Quality Environment.
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Financial

1. Cost of proposal: Estimated cost 20k - This is an estimated figure provided by the Head of Construction and Maintenance based on photographs and plan provided. A site visit will need to be carried out to obtain a works estimate
 2. Ongoing costs: Non-recurring cost.
 3. Budget head/performance centre: Planning Investigation / Enforcement in Development Control
 4. Total current budget for this head: £ To be advised at meeting
 5. Source of funding: To be advised at meeting
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Staff

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

1. Legal Requirement: Non-statutory - Government guidance.
 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 action, in order to rectify the breach, 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: Previously supported action

3. COMMENTARY

3.1 The **planning and enforcement history** of the site can be summarised as follows:

Planning

- 3.2 Ref. No. DC/0304270/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 26th October 2005, followed by a correction notice issued on 11th 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.

Enforcement

- 3.7 On 26th January 2007 an enforcement notice was issued against the owner 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 Owner subsequently appealed against the notice. On 2nd November 2007 the appeal was dismissed and the notice was upheld subject to a variation, which allowed four of the 10 windows. The notice requires the removal of the remaining 6 windows, which has not been complied with to date.
- 3.8 On 7th May 2009, the Council successfully prosecuted the owner for failing to comply with the requirements of the notice. The owner 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
- 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.

4. CONSIDERATIONS

Injunction Action

Section 187B of the Town & Country Planning Act 1990 states:

4.1 *“Where the local planning authority considers it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their powers under this part.”*

4.2 The case of **South Buckinghamshire DC v Porter (“Porter”)** is an important precedent as far as injunctions are concerned, being a case in which the impact of the Human Rights Act 1998 was taken into account. In this case, the court’s approach to grant injunctive relief under section 187B is set out below in relevant part (emphasis added):

*“...but it seems to me no less plain that the judge should not grant injunctive relief unless he would be prepared if necessary to contemplate committing the defendant to prison for breach of the order, and that he would not be of this mind unless he had considered for **himself all questions of the hardship for the defendant and his family...** I cannot accept that the consideration of these matters is, as Burton J suggested was the case in the pre-1998 era, “entirely foreclosed” at the injunction stage. Questions of the family’s health and education will inevitably be of relevance. But so too, of course, will be the **need to enforce planning control in the general interest and, more importantly therefore the planning history of the site. The degree and flagrancy of the postulated breach of control may well prove critical. If conventional enforcement measures have failed over a prolonged period of time to remedy the breach, then the court would obviously be the readier to use its own, more coercive powers. Conversely however, the court might well be reluctant to use its powers in a case where enforcement action had never been taken. On the other hand, there might be some urgency in the situation sufficient to justify the pre-emptive avoidance of an anticipated breach of planning control. Considerations of health and safety might arise. Preventing a gypsy moving onto a site might, indeed, involve him in less hardship than moving him out after a long period of occupation. Previous planning decisions will always be relevant; how relevant, however, will inevitably depend upon a variety of matters, including, not least, how relevant they are, the extent to which considerations of hardship and availability of alternative sites were taken into account, the strength of the conclusions reached on land use and environmental issues, and whether the defendant took the opportunity to make his case for at least a temporary personal planning permission”***

4.3 Whilst certain elements of the Porter decision may not be directly relevant to the current case, it does contain very important elements which must be considered in reaching a decision in relation to applying for injunctive relief.

4.4 The Porter case furthermore regarded the local authority’s decision to seek injunctive relief as relevant in deciding whether to authorise an injunction, but reiterated the relevance and weight of the local authority’s decision will depend on the extent to which they (the local authority) can be shown to have had regard to all the material considerations and to have properly posed and approached the article 8(2) questions as to necessity and proportionality.

4.5 In reaching a decision to apply to the County Court for an injunction, the Committee must therefore take various matters into account:-

The London Borough of Bromley is the Planning Authority for the area and as such has a duty to enforce planning control, taking into account relevant legislation, Government guidance and its own policies as set out in the Unitary Development Plan. It must, however, also demonstrate that the use of an injunction is in the public interest, and it must give consideration to all possible remedies and be convinced that no alternative means of enforcement would be effective, and that due consideration of the human rights of the defendant have been taken account of.

4.6 In considering an application for an injunction, the Court will apply various tests set out in the Porter judgement which must be satisfied and it will have to be demonstrated that, in reaching a decision to seek this form of enforcement, the Committee has also taken into account all material considerations.

(a): Necessity – whilst the court will not question the correctness of the planning status, it is bound to come to a broad view as to the degree of damage resulting from the breach and the urgency or otherwise of bringing it to an end.

In this case, the breach has been continuing for some considerable time, and despite giving the owner ample opportunity to remove the 6 unauthorised roof lights, he has failed to do so, in flagrant breach of planning control. Members will need to consider reasons for the urgency. Members may feel that in view of the planning and enforcement history of this case, the matter has become more urgent and it has become clear that the Owner has no intention of complying with the enforcement notice, and that there comes a point beyond which it is unreasonable to allow the breach to continue any further.

(b): Proportionality – it is essential to demonstrate that the use of an injunction is appropriate and necessary for the attainment of the public interest objective sought but also that it does not impose an excessive burden on the individual whose private interests are at stake.

In this case, members may wish to consider the comments made by the Planning Inspector which is contained in the decision notice dismissing the appeal, dated 2nd November 2007:

“I do not therefore consider that these measures would fully address the harm identified. In order to remedy the harm to the living conditions of neighbouring residents, it is necessary in my opinion, to remove the windows. No lesser steps would overcome the damage caused.”

Members should note that any breach of an injunction once granted may give rise to sanctions including imprisonment.

(c): Planning history and degree of flagrancy - *As can be seen from the planning and enforcement history set out above, every opportunity has been taken by the owner to make full use of the options open to him to seek permission to retain the roof lights. Despite having had various applications and appeals refused, the unauthorised use continues in flagrant breach of planning control.*

4.7 Members may wish to consider the ongoing negative effect on the character and appearance of the surrounding area and on the living conditions of neighbouring residents, primarily in relation to overlooking and the degree of harm it is causing to local residents.

4.8 Members should note that the decision of a County Court Judge to grant an injunction order could be appealed to the High Court, however permission would be required.

Direct Action

4.9 Section 219 (1) of the TCPA states that: If, within the period specified in a notice under section 215 in accordance with subsection (2) of that section, or within such extended period as the local planning authority who served the notice may allow, any steps required by the notice to be taken have not been taken, the local planning authority who served the notice 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

4.10 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. Expenses recoverable under S219 of the TCPA 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.

5. CONCLUSIONS

5.1 There is a long planning and enforcement history in relation to this matter. Members and The Portfolio Holder for Renewal and Recreation may feel that the time has come where, in considering all of the relevant factors of this case, it is now a necessary and proportionate response, to seek injunctive relief from the courts or take direct action in order to finally rectify the breach.

6. POLICY IMPLICATIONS

6.1 Policies BE1 and H8 of the Unitary Development Plan regarding the general design and impact of development, and residential extensions.

7. FINANCIAL IMPLICATIONS

7.1 The estimated cost of the proposed works under S219 of the TCPA 1990 will be £20k. Written quotes will be sought in accordance with Financial Regulations to ensure value for money.

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. This would include an abortive cost if the owner decides to carry out the works at less than 7 clear days notice of 25% and 50% at less than 24 hours notice.

8. LEGAL IMPLICATIONS

8.1 Fully addressed in the body of the report.

Non-Applicable Sections:	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.