

Decision Maker: PLANS SUB-COMMITTEE NO. 1

Date: Thursday 21 February 2013

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

Title: 138 LOCKESLEY DRIVE, ORPINGTON, BR5 2AE

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Chief Officer: Chief Planner

Ward: Cray Valley West

1. Reason for report

This matter has previously been reported to Plans Sub Committee on 24 November 2011 (Item 5.2), 16 February 2012 (Item 5.1) and 16.08.2012 following complaints concerning a number of alleged breaches of planning control ,

The resolution of the Sub Committee on 16 February 2012 was that no further action should be taken subject to submission of details of a boundary treatment scheme along the side boundary between 136 and 138 Lockesley Drive within 1 month of the date of that meeting of a height, position and materials to be approved by the LPA.

No such details have been submitted and this report considers what further action should be taken.

2. **RECOMMENDATION(S)**

Members views are requested.

3. COMMENTARY

3.1 Since the date of the meeting in August 2012, further visits have been made to the site in order to ensure that the agreed boundary treatment scheme is implemented within the time limit set. The present owners of 138 Lockesley Drive purchased the property around November 2011 when this matter was first reported to committee. At the time of purchase a 1.8M fence was in place along the side boundary between Nos. 138 and 136 and the new owners bought the property in the belief that the fence was included in the sale. They were unaware that the fence was the subject of a boundary dispute between the former owner and the occupier of 136 Lockesley Drive.

3.2 When they took possession of the property the fence had been removed. The boundary dispute was ongoing but this is a civil rather than a planning matter.

3.3 The present owners of 138 Lockesley Drive claim they are not in a financial position to implement a boundary scheme and require more time to either restore the original fence or erect a new fence.

3.4 The relevant background was set out in the previous report which is repeated below.

3.5 The property is situated on a hill and the land slopes down from west to east. The existing level of the rear garden is approx. 300mm higher than the rear garden of No.136, although this partly reflects the natural gradient of the land, and does not appear to be significantly higher than other properties in the vicinity. The rear garden of 136 includes a patio area with steps up to the lawn which emphasises the difference in levels. No.138 also has a recently constructed patio area which is level with the rear of the house.

3.6 Permission was granted in 2008 for a detached garage at the side of 138, (ref. 09/00488). The approved plan gives no indication of ground levels and there was nothing to suggest that it was proposed to increase levels in the rear garden. However, in the area behind the garage and adjoining the side boundary ground levels are approx. 500mm higher than the adjoining garage at 136. This means that it is possible to overlook the flank wall of the garage at 136 and to the lesser extent the rear patio.

3.7 It was previously reported that ground levels along the eastern boundary appeared to have been increased by up to approx. 500mm adjacent to the detached garage but reducing to approx. 100mm at the end of the garden. However there was insufficient information to indicate precisely how much levels had been increased.

3.8 A survey was carried out on 9 January 2012 in order to ascertain the natural and possible raised level of the garden. The survey was carried out in the presence of the new owner of 138 and the owner of 136 Lockesley Drive.

3.9 The main conclusions of the previous report are summarised below:

“Topography of site

The site is naturally graded in two directions, being on the slope of a hill, will falls lowering from the garden at No.138 to No.136, both perpendicular and parallel to the property boundary, towards the road and the front.

Site Survey

The boundary between both properties was measured from a zero datum at the intersection of the properties at the rear of the gardens. It is not possible to make any accurate assessment of what the ground levels were at No.138 Lockesley Drive, prior

to the commencement of building works to extend the property and the addition of a detached garage, commencing in 2007. At present, the line of the boundary for the first 18.1m is not clear, and the existing fence line has been removed. A rope "line" has been established by the owner of No.136, but the boundary is yet to be established by both owners. Levels were therefore taken between ground levels on the line of the existing fence.

Conclusions

3.10 The change in levels from one side of the boundary to the other is shown on the attached drawing. To the rear, the maximum change in level to the first 18.1m is 320mm. Where a new fence has been installed behind the detached garage, with 2No. concrete "gravel boards" at the base, the change in levels reach a maximum dimension of 570mm, although as shown in the detail section, the change is not fully 570mm, due to the higher ground level falling away towards the gravel boards."

3.11 The maximum difference in ground levels between 138 and 136 was confirmed to be 570mm. However, the surveyor was unable to make any accurate assessment of ground levels before the commencement of recent building works. Furthermore, the survey results do not reflect the natural contours of the land which slopes downhill from west to east, meaning that the dwelling at 138 was built at a higher level than 136.

3.12 Whereas the maximum difference in levels along the side boundary was found to be 570mm, the maximum change in levels to the rear of the garden was 320mm. Towards the rear boundary this reduces to only 100mm. Given the lack of information to confirm the original ground levels the extent of land raising towards the rear boundary varies between 320mm and 100mm over a distance of approx. 20m. The extent to which levels have been raised in the rear part of the rear garden is not considered to be significant and it is concluded that no further action would be expedient in respect of this area.

3.13 The extent of land raising is more significant along the area between the front boundary and approx. 15m into the site. Levels in this part of the site are up to 570mm higher than 136, which is marginally higher than previously estimated. However, the original levels are not known and the precise extent of land raising cannot be confirmed with any degree of certainty. Allowing for the natural slope of the land the original ground level at 138 is estimated to have been between 100-300mm higher than 136, having regard to the topography of the surrounding area.

3.14 The main issue is whether the increase in ground levels has resulted in a material loss of amenities to the adjoining properties to the extent that enforcement action is expedient. If enforcement action was taken the requirement of the notice would be to reduce ground levels to their former level before the breach took place. As original ground levels are not known with any degree of certainty, the notice would have to give a notional level, which would lack precision and run the risk of being quashed on appeal. The required reduction in levels would be between 100-570mm over the length of the side boundary and it would be necessary to specify at which locations ground levels should be lowered.

3.15 A further consideration is to define the harm caused by the increase in levels. As concluded above the main area of concern is the first 15m along the side boundary from the frontage. Some degree of overlooking of the side elevation of 136 has resulted from the raising of ground levels to the side and rear of the detached garage at 138. This overlooks the flank wall of a detached garage and garden shed at 136 and there are 3 first floor windows on the flank wall of the dwelling. However, there is a new 6' closeboarded fence along this section of the side boundary which provides some degree of privacy. The reinstatement of the remainder of the side boundary fence will assist in providing an adequate level of privacy to both rear gardens.

3.16 It is understood that there is a current boundary dispute along this section of the boundary but this is a civil rather than a planning matter.

3.17 In conclusion, the difference in ground levels between 138 and 136 varies between 570mm and 100mm. The maximum difference in levels occurs along the front part of the side boundary over a distance of approx. 15m from the frontage. Enforcement action could be taken to reduce levels in this part of the garden but it is concluded that such action would not be expedient. The harm caused by the raising of ground levels is not considered to be so significant so as to result in a material loss of residential amenity to 136. On balance it is therefore concluded that taking action to require existing ground levels to be lowered would be disproportionate. Accordingly it is recommended that no further action be taken.

3.18 Whilst the owners of 138 Lockesley Drive have indicated that it remains their intention to erect a new boundary fence along the common side boundary with No 136 but so far no boundary treatment has been implemented despite assurances to do so. They previously requested more time to do so but this extended period expired some time ago. It would clearly be in the interests of both parties to reinstate the former boundary screening along the common side boundary in order to safeguard privacy and overlooking but the erection of the fence is not subject to an effective enforcement notice. It is concluded that a further extension of time would be unlikely to achieve the desired solution.