

Decision Maker: PLANS SUB-COMMITTEE NO. 2

Date: Thursday 11 September 2014

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

Title: 2 THE DRIVE, BECKENHAM

Contact Officer: John Stephenson, Planning Investigation Officer
Tel: 0208 461 7887 E-mail: John.Stephenson@bromley.gov.uk

Chief Officer: Chief Planner

Ward: Copers Cope;

1. Reason for report

Continued and long-terms planning breaches on the site

2. **RECOMMENDATION(S)**

Authority be granted to proceed in regard to all necessary enforcement action, including possible Enforcement Notice, Breach of Condition Notice and injunction proceedings.

3. COMMENTARY

3.1 There is an extensive planning and enforcement history associated with the application site, dating back to 1995. A full planning history of the site is available to view under file ref. 14/00858/FULL6.

3.2 Under ref. 13/02016/FULL6, planning permission was granted in August 2013 for a first floor side/rear extension that would be situated to the southern and eastern sides of the original part of the dwelling. The application was submitted following negotiations between the applicant and planning officers, and was aimed at remedying the unsatisfactory state of the site, by partially removing various partially-built structures and consolidating other development within the site. The permission was subject to numerous conditions, including No 2:

“Before the development hereby permitted is commenced, the existing first floor side/roof walling to the southern side of the dwelling shall be demolished and all rubble removed from site.”

3.3 Within the last four months, work has recommenced on the site, although this has failed to accord with any approved planning permission. This has involved two additions to the existing dwelling:

- first floor rear extension
- substantial completion of unauthorised single storey rear extension (adjacent to No 4 The Drive)

First floor rear extension

Work has recently taken place on extending the first floor at the rear, beyond the existing rear building line. In effect, it appears that the person responsible is seeking to implement – albeit in part, and not in accordance with the approved plans – the scheme granted permission in 2013 for first floor side and rear extension under ref. 13/02016. However, that planning permission was subject to various conditions, and the works that have occurred breach the following:

No. 2: *Before the development hereby permitted is commenced, the existing first floor side/roof walling to the southern side of the dwelling shall be demolished and all rubble removed from site.*

No. 3: *The first floor side/rear extension hereby approved shall be carried out as a single building operation and completed as one building operation.*

No. 10: *The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans approved under this planning permission unless previously agreed in writing by the Local Planning Authority.*

To date, outside walls and a roof have been built with the extension projecting to a depth of 5.1m, and maintaining a separation of 2.0m to the boundary with No 4, Notwithstanding, the failure to demolish the existing first floor side roof/walling prior to constructing the permitted extension, and failing to implement all works out as part of a single building operation, the works exceed the depth and width (including proximity to the boundary with No 4) of the rear part of the extension permitted under ref. 13/02016, and cannot be considered to be in complete accordance with the approved plans.

Given the extent of the works that have already taken place in respect of this unauthorised first floor extension – which is considered substantially complete in terms of the outside walling of the structure – Members are advised to authorise a Breach of Condition Notice, on the basis that the works that have been undertaken do not adhere to the above-mentioned conditions of the planning permission granted under ref. 13/02016. The works that have taken place are clearly visible from surrounding properties, including from the side of No 4 whose amenities are adversely affected as a result. Furthermore, the purpose of the proposal permitted under ref. 13/02016 was to regularise development within the site in order to improve the visual amenities of the site and the wider area: something which these unauthorised works fail to achieve.

A Breach of Condition Notice would be aimed at ensuring compliance with the terms of the planning permission granted under ref. 13/02016. In effect, the person responsible for the works would be required to remove the extensions which exceed the parameters of the extension permitted under ref. 13/02016, which include the existing first floor side/roof walling to the southern side of the dwelling and part of the unauthorised first floor rear extension referred to in the preceding two paragraphs.

Single storey rear extension

The single storey rear extension, which was the subject to a 2003 Breach of Condition Notice (concerning Condition 3 of application ref. 00/03485) has been rebuilt in the last few months having previously been substantially demolished as a means of implementing the earlier BCN requirements, following a prosecution for failing to comply with the requirements of that Notice. Based on site inspections, this is considered to be substantially complete. This approach was also supported by a 2005 Appeal Decision.

Accordingly, an Enforcement Notice could be issued containing the requirement to:

“Remove the unauthorised part of the single storey rear extension (that part which extends beyond 3.5 metres adjacent to No 4 The Drive, Beckenham”

4. LEGAL IMPLICATIONS

In the event that the issue of Enforcement or Breach of Condition Notices, and any subsequent prosecution in the Magistrates Court fail to achieve the satisfactory completion of the works required, members may consider whether it would be appropriate to seek an injunction requiring the necessary works to be carried out.

4.1 Section 187B of the TCPA states: “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 clearly set out its approach to granting injunctive relief under section 187B. In particular the following view was expressed:

“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”...“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”... “Previous planning applications will always be relevant”.

The Porter case sets out important issues which must be considered in reaching a decision on whether to apply for injunctive relief.

4.3 In the current case Members must 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 breaches of planning control, take into account relevant legislation, Government guidance and its own policies as set out in the adopted 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 has been carefully considered.

4.4 In determining 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.

4.5 **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 will have to consider whether an application for an injunction would be a proportionate response, bearing in mind that a further Breach of Condition Notice could be served and prosecution action taken in the event of non compliance. Members may, however consider that such action would only create further delay and securing another conviction will result in the same outcome, i.e. a fine as opposed to compliance with the Notice. Members may feel that compliance would be more likely with an injunction order in force.

4.6 **Planning history and degree of flagrancy** - As previously mentioned in the report this site has had a long planning history with numerous similar applications many have which have been refused. Prosecution action has been taken against the person responsible and despite this factor and numerous requests he and the owner of the land have failed to complete the works, much to the distress of local residents, many of whom have complained about the adverse impact the unfinished works is having on the surrounding area. As a result members may consider such degree of flagrancy warrants enforcement proceedings, including this issuing of an Enforcement Notice, a Breach of Condition Notice and possible injunction

proceedings (the latter most likely dependent on the outcome of the Council pursuing the earlier enforcement options).

4.7 **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 the current case the works have been incomplete for a number of years, so it would be difficult to argue that the need for an injunction is urgent in the sense of being necessary as a pre-emptive measure. Members may feel that the matter has become more urgent as time has passed without satisfactory compliance with the Breach of Condition Notice, in that there comes a point beyond which it becomes unreasonable to allow the breach to continue any further.

5. CONCLUSIONS

5.1 This matter has a long and difficult planning history. The last permission to be granted was granted with a view to consolidating previous attempts at extending this property in compliance with planning considerations and policies. The works have been carried out in such a way that this has not happened, and members may feel that it is now expedient to commence enforcement action, initially with the service of appropriate notices and further action to follow if that does not succeed in achieving compliance.

In the event of a successful application for an injunction if this becomes necessary, costs would be sought from the defendant. In the event of an unsuccessful application, the Council may be required to pay costs to the defendant of an amount which cannot at this stage be quantified.

6. LEGAL IMPLICATIONS

Fully addressed in the body of the report

| | |
|---|--------------------------------------|
| Non-Applicable Sections: | Financial and Personnel Implications |
| Background Documents: (Access via Contact Officer) | |