

**Decision Maker:** PLANS SUB-COMMITTEE NO. 3

**Date:** Thursday 21 December 2017

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

**Title:** 9 MOSELLE ROAD, BIGGIN HILL

**Contact Officer:** John Stephenson, Planning Investigation Officer  
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**Chief Officer:** Chief Planner

**Ward:** Biggin Hill;

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1. Reason for report

Following a complaint alleging the subject property was not being built in accordance with the approved plans the site was investigated in order to establish whether the matters constituted a breach of planning control.

The report summarises the findings of these investigations and also considers the expediency of taking enforcement action having regard for the development plan and any other material considerations.

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2. **RECOMMENDATION(S)**

- 2.1 That Members decide on a course of action with a recommendation that it would not be expedient, or appropriate to take action having regard in particular to the Inspectors deliberations contained within the decision letter in allowing the appeal and granting planning permission.
- 2.2 Members may also consider it appropriate to invite a further application to regularise the development on site, to cover the identified variation from the approved scheme.

### Impact on Vulnerable Adults and Children

1. Summary of Impact: N/A
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### Corporate Policy

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

1. Cost of proposal: No Cost
  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: N/A
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### Personnel

1. Number of staff (current and additional): N/A
  2. If from existing staff resources, number of staff hours: N/A
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### Legal

1. Legal Requirement: Non-Statutory - Government Guidance
  2. Call-in: Not Applicable:
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### Procurement

1. Summary of Procurement Implications: N/A
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Local
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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 On 18<sup>th</sup> August 2009 planning permission was allowed on appeal for two 3 bedroom semi-detached houses. The Inspector imposed conditions restricting permitted development rights relating to roof and side extensions as follows:

“6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no enlargement, improvement or other alteration shall be made or constructed on the flank elevations of the dwellings hereby approved without obtaining planning permission from the local planning authority.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no enlargement of or alteration to the roof of the dwellings permitted by Class B or C of Part 1 of Schedule 2 to the Order shall be carried out without obtaining planning permission from the local planning authority.”

3.2 Building Control inspection records confirm that foundation excavation works were commenced on 4<sup>th</sup> September 2012 to implement this permission.

3.3 On 1<sup>st</sup> December 2010 a Certificate of Lawfulness application was submitted for rear extensions but was subsequently withdrawn on the basis that permitted development rights could not be exercised on the properties until it had been confirmed that they had been substantially completed.

3.4 A further revision application under planning ref.11/00661 was submitted on 28<sup>th</sup> February 2011 to incorporate two 2 storey centralised rear extensions which were granted permission.

3.5 Two further two storey rear infill extensions erected to the side of the rear extension granted permission under ref. 11/00661 are the main source of complaint in this matter. These do not appear on the approved plans and it is considered that they do not benefit from permitted development rights on the basis that they do not comply Schedule 2 Part 1 A.1 (j) of the General Permitted Development Order, i.e. they would exceed 4 metres in height, have more than one storey and have a depth greater than half the original house.

3.6 Furthermore, it is considered that these extensions are in breach of conditions 6 and 7 of permission 11/00661 referred to above because they would:

(i) result in an enlargement to the main roof of the dwellings;

(ii) on the basis of the interpretation of a side elevation of a house given in the 'Permitted Development for householders - technical guidance' the development is considered to result in flank extensions.

3.7 The applicant / owner was contacted by email on 26<sup>th</sup> October 2016 and requested to submit a planning application. On the basis that he considered the work to be permitted development it was intended that a Certificate of Lawfulness would be submitted but this has never been received.

3.8 Having established that the development represents a breach of planning control the other issue to consider is the expediency of taking enforcement action and whether In line with paragraph 207 of the National Planning Policy Framework it would be a proportionate response to do so. In this case it is considered that regard should be had to the Inspectors reasoning in allowing the appeal. In particular what the Inspector sought to achieve in adding the conditions restricting permitted development rights.

3.9 With regard to the character and appearance of the area the Inspector considered it to be important to restrict the height of the dwellings. Stating at paragraph 7:

“In my view it is important to restrict the height of any dwellings replacing No.9 as an excessively tall building sited between 2 smaller ones would appear incongruous. Whilst a reduction of some 1m may not be substantial, I consider that in the context of the appeal site and its surroundings it is a necessary amendment to the scheme. It would reduce the ridge height of the proposal to little more than that of the existing bungalow and, taking into account also the proposed lowering of the site level, would limit any contrast with the buildings on each side.”

3.10 The restriction of permitted development rights relating to roof extensions appears to relate to the importance the Inspector attached restricting the height of the roof. At the appeal the height was reduced from 8m -7m. When permission was granted for revisions to this scheme under 11/00661 a 0.4m increase in the height of the dwellings was considered acceptable by the Council at this stage. A site visit carried out on 10<sup>th</sup> August 2016 confirmed that the height of the proposal was compliant in this respect.

3.11 It is considered that the lack of a condition concerning rear extensions and the fact that there is a condition that specifically addresses side extensions is an indication that the Inspectors was mainly concerned about the impact of any bulk coming closer to the respective shared side boundaries with Nos. 7 and 11 as opposed to the impact of a rear extension in isolation.

3.12 With regard to the bulk and width of the dwellings the Inspector stated: (para 8-10):

“The other criticisms made by the previous Inspector and by the Council in relation to the present appeal scheme were in relation to the bulk and width of the proposal. The site is wide enough to accommodate the 2 semi-detached houses, which would be of a scale that is in keeping with that of other dwellings in Moselle Road. The dwellings would not extend further forward than the existing bungalow by any significant distance and they would respect the existing front building line formed by Nos.7 and 11. With the lower ridge height proposed, I do not consider that they would appear unduly bulky when seen from the street...In the previous scheme, the 2 detached houses would have been about 1m and1.8m respectively from the flank boundaries of the site. With the appeal scheme, these distances are increased to around 2.7m and 3m....These elements of separation, together with the gaps in the frontage development at first floor level between the proposed houses and Nos.7 and 11, would in my opinion be adequate to ensure that when seen from the street the dwellings would maintain sufficient separation from the neighbouring bungalows.”

3.13 With specific regard to the impact upon the living conditions of neighbouring properties at No. 7 and 11 the Inspector stated:

No.7 – (para 12) “The new dwellings would be built up to the boundary with No.7 but this reflects the current situation where a single storey extension to the existing bungalow is also alongside part of the boundary. At first floor level there would be the gap of about 2.7m to provide, as I have previously noted, an adequate sense of separation of the 2-storey element from the boundary. There is only one window in this side of the bungalow at No.7 and therefore the effect on the outlook from No.7 would be limited, particularly as the dwellings would not project in front of No.7 or further to the rear of that dwelling.”

3.14 The single storey side garages which were shown to be built up to the boundary of the dwellings have not been built. It is also noted that the Inspector considered [as per para 3.11 above] that there would be adequate first floor separation provided by the distance maintained.

3.15 With regard to No.11 the Inspector stated – “No.11 is arranged with the windows of living accommodation facing the side of the appeal property. The single storey garage at the side of the proposed dwelling next to No.11 would be mainly alongside the garage of No.11 and would not extend far enough back to significantly affect the outlook from the living room at that dwelling. The outlook from the window of this room would however be changed, with the 2-storey element of the proposal replacing the current roof structure of the existing bungalow. However, with the lower 7m ridge height, the additional height of the roof over and above that of the existing bungalow would be less than 1m,

and the first floor side wall of the new dwelling would be separated from the boundary by some 3m. There is also a further 1.5-2m separation between the flank wall of No.11 and the boundary of the property. In my view, the outlook from this window would not be significantly compromised. The window faces to the west and there would be some reduction in the sunlight which it receives from early afternoon onwards, but, in view of the separation and limited additional roof height, I do not consider that the reduction would be unacceptable, bearing in mind also that lighting levels in this room would be assisted by the glazed patio door in the opposite elevation.”

- 3.16 Once again the garage up to the boundary has not been built and the Inspector has accepted that given the separation at first floor level together with the separation between the flank of No.11 and the boundary of the property there would not be an unacceptable impact upon the living conditions of neighbouring properties. The distance to the boundary with No.11 when measured on site was noted at circa 2.6m this is some 0.4m less than the approved plan. However, It is on balance considered that the flank to flank distances at first floor level remain at an acceptable level.
- 3.17 Whilst understanding the neighbours concerns in relation to the incremental way the development has come about. It is not considered that the impact upon the living conditions of occupants of No. 7 and 11 as a result of these changes are so significant as to warrant enforcement action to correct the breaches of planning control in this case.
- 3.18 Advice has been sought from the borough legal department who accept that it would not be expedient to take enforcement action in this case because the addition of two rear infill extensions erected to the side of the rear extension of the property would not cause harm to the neighbouring properties in terms of outlook and the surrounding area.

<b>Non-Applicable Sections:</b>	<b>IMPACT ON VULNERABLE ADULTS AND CHILDREN, POLICY IMPLICATIONS, FINANCIAL IMPLICATIONS, PERSONNEL IMPLICATIONS, LEGAL IMPLICATIONS, PROCUREMENT IMPLICATIONS</b>
Background Documents: (Access via Contact Officer)	N/A