Southend-on-Sea Borough Council

Report of the Corporate Director for Place
To
Development Control Committee
On
14th January 2015

Report(s) Enforcement of Planning Control
A Part 1 Public Agenda Item – Town and Country Planning Act 1990 Section 172
Reports prepared by: Enforcement Officers

1 Introduction
1.1. This report relates to alleged breaches of planning control. Recommendations are made at the conclusion of each item.

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<td><strong>Breach of Control</strong></td>
<td>Erection of a fence without planning permission</td>
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![Map of 10 Claremont Road, Westcliff on Sea with a red box indicating the location of the breach of control.]
1 Site and Surroundings

1.1 The site relates to a two storey semi-detached dwellinghouse located on the north side of Claremont Road. It is in a residential road close to the open west side of a large car park on the north side of London Road.

2 Lawful Planning Use

2.1 The lawful use of the land concerned is as a dwellinghouse.

3 Present Position

3.1 The erection of the fence was brought to attention by a local resident on 9 October 2014. A visit by an enforcement officer identified that because the fence exceeded one metre in height adjacent to a highway, it did not comply with permitted development (PD) rights. The matter was discussed with the owners at the time, and they were asked either to reduce the height of the fence to 1 metre within 2 metres distance from the pavement, or to submit a planning application for permission to retain the fence. However no application has been received and the fence remains unaltered.

4 Appraisal

4.1 Permitted development rights allow for a means of enclosure to be erected adjacent to a highway provided it is not more than 1 metre in height. The term 'adjacent' is not defined within the PD regulations. Therefore, the Council’s approach has historically been to consider any means of enclosure within 2 metres of the highway as a structure that is 'adjacent' to a highway.

4.2 In this instance the fence runs perpendicular to the highway and is approximately 4 metres in length, consisting of 2 panels, each approximately 2 metres long. The panel closest to the highway has been chamfered so that its height drops from 1.7 metres to approximately 1.4 metres as it joins with the existing rendered pillar.

4.3 The National Planning Policy Framework 2012, policy CP4 of the Core Strategy, Borough Local Plan policy C11 and SPD1 (Design and Townscape Guide) are relevant policies and guidance when considering the visual impact of new development and whether it is sympathetic to its surroundings. Whilst the fence is not typical within the road, the materials used and the general appearance of the fence are considered acceptable. It is also set behind a reasonably tall rendered pillar which is adjacent to the highway. The fence panel closest to the house is 30 cm lower than the 2 metre height allowed under PD rules and this panel, on its own, does not require planning permission (given it is set 2 metres back from the highway). The panel closest to the highway has also been tapered to reduce its visual prominence. Furthermore it can be seen that the only neighbouring property adjacent to the fence has a considerable proportion of its open porch visible above the top of the fence. This means that the fence cannot be considered to cause undue loss of light or an unreasonable sense of enclosure. Overall it is considered that there is no material visual harm caused by this fence and that it would not be reasonable, expedient, in the public interest, or proportionate to take enforcement action.
5 Recent Planning History

5.1 None

6 Planning Policies


6.3 Southend-on-Sea Borough Local Plan Policy C11 (New Buildings, Extensions and Alterations).


7 Recommendation

7.1 Members are recommended to TAKE NO FURTHER ACTION
Reference: EN/14/00232/UNAU

Ward: Leigh

Breach of Control: Without planning permission installed PVC framed windows to front elevation at first floor level

Address: 56 Broadway, Leigh on Sea Essex SS9 1AG

Case Opened: 25 September 2014

Case Officer: Philip Kelly

Recommendation: AUTHORISE ENFORCEMENT ACTION
1 Site and Surroundings

1.1 The site is in the Leigh Cliff Conservation Area. It is a restaurant with the upper floors used as residential accommodation for staff. It is on the south side of Broadway 20 metres west of the junction with Avenue Road.

2 Lawful Planning Use

2.1 The lawful use of the site appears to be a commercial use at ground floor with residential accommodation above.

3 Present Position

3.1 On 25 September a Council officer reported that PVC windows had been newly installed at 56 Broadway. On 1 October 2014 the owner was advised that these were unacceptable and to take submit an application for planning permission to reinstall wooden sliding sash windows. Although the owner acknowledged the letter, and he was further advised about the need for replacement windows, the PVC windows remain in place.

4 Appraisal

4.1 The NPPF requires new development which affects heritage assets to respect conserve and enhance the historic environment. This is supported by Core Strategy policy CP4 which requires development to safeguard and enhance the historic environment including Conservation Areas. Local Plan Policy C4 requires development in Conservation Areas to use materials in alterations that are appropriate to the area and sympathetic to existing and neighbouring buildings. The Design and Townscape Guide supports these policies and recognises the importance of original materials and design/detailing of windows in Conservation Areas.

4.2 The windows that were previously installed at first floor level were timber sliding sash windows. The new windows due to their design and materials do not preserve or enhance the character of the conservation area. As such they are contrary to the above policies and guidance and therefore, detrimental to the historic and visual amenity of the Leigh Cliff Conservation Area.

4.3 Taking enforcement action in this case may amount to an interference with the owner/occupiers Human Rights. However, it is necessary for the Council to balance the rights of the owner/occupiers against the legitimate aims of the Council to regulate and control land within its area. In this particular case it is considered reasonable, expedient and proportionate and in the public interest to pursue enforcement action to remove the unauthorised windows.

5 Planning History

5.1 No planning history.
6 Planning Policy Summary

6.1 National Planning Policy Framework (NPPF), National Planning Practice Guidance (NPPG)

6.2 Core Strategy Policy CP4 (The Environment and Urban Renaissance)

6.3 Borough Local Plan Policy C4 (Conservation Areas)

6.4 Design and Townscape Guide (SPD1)

7 Recommendation

7.1 Members are recommended to AUTHORISE ENFORCEMENT ACTION for the removal of the unauthorised windows at first floor level in the front elevation. This is because of the detriment to the historic and visual character and amenities of the Conservation Area, contrary to the NPPF, Policy C4 of the Borough Local Plan, Policy CP4 of the Core Strategy and advice contained within the Design and Townscape Guide (SPD1).

7.2 The authorised enforcement action to include (if/as necessary) the service of an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of said Notice.

7.3 When serving an Enforcement Notice the local planning authority must ensure a reasonable time for compliance. It is considered that a three months compliance period is reasonable in these circumstances.
**Reference:**  EN/14/00205/UNAU  

**Ward:**  Leigh  

**Breach of Control:**  Without planning permission installed PVC framed windows to front elevation at first and second floor levels  

**Address:**  89 Broadway, Leigh on Sea Essex SS9 1PE  

**Case Opened:**  2 September 2014  

**Case Officer:**  Philip Kelly  

**Recommendation:**  AUTHORISE ENFORCEMENT ACTION
1 Site and Surroundings

1.1 The site is in the Leigh Cliff Conservation Area. It is a retail unit in a primary shopping area. It is on the north side of Broadway 10 metres west of the junction with Leigh Hall Road.

2 Lawful Planning Use

2.1 The lawful use of the site is as a retail unit.

3 Present Position

3.1 On 2 September a Council officer reported that PVC windows had been newly installed at 89 Broadway. The owning company was advised that these were unacceptable. Although a need to reinstall timber windows matching the original appearance was acknowledged the PVC windows remain unaltered at this stage.

4 Appraisal

4.1 The NPPF requires new development which affects heritage assets to respect conserve and enhance the historic environment. This is supported by Core Strategy policy CP4 which requires development to safeguard and enhance the historic environment including Conservation Areas. Local Plan Policy C4 requires development in Conservation Areas to use materials in alterations that are appropriate to the area and sympathetic to existing and neighbouring buildings. The Design and Townscape Guide supports these policies and recognises the importance of original materials and design/detailing of windows in Conservation Areas.

4.2 The windows that were previously installed at first and second floor level were timber casement windows with fanlights that included glazing bars. These windows are replicated on the adjacent property (no.87) and form part of a matching pair. The new windows due to their design and materials do not preserve or enhance the character of the conservation area. As such they are contrary to the above policies and guidance and therefore, detrimental to the historic and visual amenity of the Leigh Cliff Conservation Area.

4.3 Taking enforcement action in this case may amount to an interference with the owner/occupiers Human Rights. However, it is necessary for the Council to balance the rights of the owner/occupiers against the legitimate aims of the Council to regulate and control land within its area. In this particular case it is considered reasonable, expedient and proportionate and in the public interest to pursue enforcement action to remove the unauthorised windows.

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5.1 No planning history.
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6.3 Borough Local Plan Policy C4 (Conservation Areas)

6.4 Design and Townscape Guide (SPD1)

7 Recommendation

7.1 **Members are recommended to AUTHORISE ENFORCEMENT ACTION** for the removal of the unauthorised windows at first and second floor levels in the front elevation. This is because of the detriment to the historic and visual character and amenities of the Conservation Area, contrary to the NPPF, policy C4 of the Borough Local Plan, policy CP4 of the Core Strategy, and advice contained within the Design and Townscape Guide (SPD1).

7.2 The authorised enforcement action to include (if/as necessary) the service of an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of said Notice.

7.3 When serving an Enforcement Notice the local planning authority must ensure a reasonable time for compliance. It is considered that a three months compliance period is reasonable in these circumstances.
Reference: 14/00235/UNAU-B

Ward: Belfairs

Breach of Control
Without planning permission, the erection of 3 outbuildings which exceed 2.5m in height and are located within 2.0m of a boundary of the curtilage of the dwellinghouse.

Address: 85 Blenheim Chase, Leigh-on-Sea, Essex, SS9 3BY

Case Opened: 25th September 2014

Case Officer: Neil Auger

Recommendation: TAKE NO FURTHER ACTION
1 Site and Surroundings

1.1 Single storey semi-detached dwellinghouse (bungalow) located to the north side of Blenheim Chase approximately 180m west of its junction with Elmsleigh Drive. The dwellinghouse occupies a large plot approximately 67.0m deep, of which some 45m is rear garden. The adjoining properties also benefit from relatively large rear gardens of 30.0m or so in length.

2 Lawful Planning Use

2.1 The lawful planning use is as a dwellinghouse within Class C3 of the Town and Country Planning Use Classes (Amendment) Order 2005.

3 Present Position

3.1 On 25th September 2014, an enforcement case was opened as a result of concerns raised by a local resident about 3 outbuildings which had been constructed within the curtilage of this property.

3.2 On 26th September 2014, a site visit was carried out when it was confirmed that 2 outbuildings had been constructed and a third was under construction all within 2.0m of the eastern boundary of the curtilage of the dwellinghouse and all having a height of approximately 3.0m to the ridge.

3.3 At the time of the site visit, it was noted that 2 of the outbuildings were in the form of summerhouses and the third was to be a domestic workshop. All were proposed to be used for purposes ancillary to the dwellinghouse.

3.4 A further complaint concerning the outbuildings was received from an adjoining resident on 2nd October 2014. This concentrated mainly on the workshop building and the comments included:

“We think the building is too high, although this does not obstruct a view it is somewhat of an eyesore protruding above our fence at the end of our garden”.

“I would like to point out that the existing outbuilding was demolished and now this is a replacement, however the existing outbuilding did not come above our fence”.

“We are also subject to two other outbuildings to the side of our property……these would not be deemed so much of a problem……but it feels our garden is becoming surrounded with outbuildings which seem unnecessarily high”.

3.5 The householders were advised that planning permission was required to retain the outbuildings.

3.6 No application was received, so a reminder letter was sent on 21st November 2014.
3.7 On 15\textsuperscript{th} December 2014, a letter was hand delivered to the Council by the householder which included the following comments:

“\textit{When we looked at the original workshop, we realised it was looking dangerous on our neighbours boundaries. So we decided to take it down and rebuild it like for like}”.

“\textit{We put two fences up as we were concerned for our neighbours security. (It was not our responsibility to erect these fences}”.

“In between these activities, my husband had a stroke and anaphylactic shock and was in intensive care for several days. He is recovering slowly”.

“\textit{His counsellor (name withheld) suggested some form of occupational therapy. As he had always found work in his workshop therapeutic, I thought it would be helpful to get someone in to finish the job}”.

“\textit{Throughout the construction phase, no one has approached us to complain}”.

3.8 To date, no application for retrospective planning permission has been received.

4 \textbf{Appraisal}

4.1 In order for outbuildings located within 2.0m of a boundary of the curtilage of a dwellinghouse to benefit from permitted development rights under Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) they should not exceed 2.5m in height.

4.2 The 3 outbuildings here all have approximate ridge heights of 3.0m (plus the additional ‘cupolas’ on the summerhouses) which means they cannot be classed as ‘permitted development’ and specific planning permission is, therefore, required. As such, in planning terms, the buildings are unauthorised.

4.3 Members will be aware, of course, that the carrying out of operational development works without the necessary authorisation is not, in itself, reason for a local planning authority to take enforcement action. This must only be taken if the development in question is considered to result in unmitigated, demonstrable harm to the amenities of the area.

4.4 Council aerial photographic records show that a large outbuilding existed in the location of the newly erected workshop but there is no record which indicates how high this original building was.

The existence of a previous building is acknowledged by the second complainant (paragraph 3.4).
4.5 Under Class E, there is no limit to the number of buildings which may be constructed in a single curtilage so long as they do not cover in excess of 50% of its area (not including the area of the dwellinghouse itself). This property benefits from a large garden and the area covered by all outbuildings is minimal in percentage terms.

4.6 Consequently, the reason the outbuildings here require planning permission is that they exceed the maximum permitted height of 2.5m by approximately 0.5m generally plus the additional height of the ‘cupolas’ on the summerhouses.

4.7 If a retrospective application for planning permission to retain the outbuildings was to be submitted, the key considerations would be the principle of the development, the design and impact on the character of the area and the impact on residential amenity.

4.8 Policy CP4 of the Core Strategy requires new development to contribute to a sustainable urban environment by maintaining and enhancing amenities, appeal and character of residential areas securing good relationships with existing developments.

4.9 Policy C11 of the Borough Local Plan requires development carried out in residential areas to be designed to create a satisfactory relationship with its surroundings.

4.10 Policy H5 requires all development within residential streets to be appropriate in its setting by respecting neighbouring development, existing residential amenities and the overall character of the locality whilst also achieving a high standard of layout and design.

4.11 The outbuildings here are of a traditional form and have been finished to a high standard. Also, they are not visible from the public domain. It is considered, therefore, that no objection should be raised to the development on design grounds.

4.12 The summerhouse located closest to the dwellinghouse at number 85 Blenheim Chase has reportedly existed for 2 years or more and, initially, local residents had no issue with the structure (paragraph 3.4). This summerhouse is readily visible from the neighbouring garden (number 87) and clearly has a visual impact on the residential amenities. However, it is considered that this impact would not be significantly reduced if the ridge height of the building was to be reduced to the ‘permitted development’ height of 2.5m.

4.13 The second summerhouse and the workshop are also visible from the adjoining properties partly due to the fact that the garden widens and extends to an area at the rear of the garden of number 87. However, these outbuildings are located some 30.0m from the rear of the closest adjoining residential facade and this significant separation is considered to minimise their visual impact.
4.14 Although the roofs of these buildings are visible above the existing boundary treatments, they are not considered to cause a sense of enclosure or overbearing presence given the substantial size of the garden and their significant separation from the rear of the adjoining dwellinghouses.

4.15 The outbuildings are located to the west and north of number 87 and, at 3.0m high, have no impact on this neighbouring property in respect of loss of light or daylight.

4.16 In terms of outlook from adjoining properties, the workshop building only obscures views of the dwellinghouses to the rear (in Woodleigh Avenue). As such, if this outbuilding were to be removed or lowered in height, it would simply result in those properties being visibly more prominent.

The second complainant accepts that no view is lost as a result of the construction of this outbuilding (paragraph 3.4).

4.17 There are no windows in the side elevations of the outbuildings which face onto the adjacent gardens so the developments do not result in overlooking and/or loss of privacy to the occupiers of the neighbouring properties.

4.18 It should also be taken into account that if the outbuildings were to be reconfigured so as not to be located within 2.0m of the boundary, not only would they then benefit from permitted development rights but their height could actually be increased to 4.0m by virtue of clause E.1 (d) (i) of Class E of the Town and Country Planning (General Permitted Development) Order 1995.

4.19 For the reasons given, it is not considered that the developments conflict with Policy CP4 of the Core Strategy or Policies C11 and H5 of the Borough Local Plan to the extent that enforcement action would be proportionate, expedient, reasonable or in the public interest and, if an application for planning permission to retain the outbuildings were to be submitted, it is considered that it would, most likely, be recommended for approval.

4.20 In conclusion, it is important that the Council adopts a consistent approach when dealing with planning enforcement issues and there is a history of no further action being taken in respect of outbuildings constructed in excess of maximum ‘permitted development’ dimensions when they result in minimal impact on the amenities of the area.

5 Planning Policy Summary

5.1 The National Planning Policy Framework (NPPF)

5.2 National Planning Practice Guidance (NPPG).

5.3 Core Strategy (DPD1) Policies KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance).
5.4 Southend-on-Sea Borough Local Plan Policies C11 (New Buildings, Extensions and Alterations) and H5 (Residential Design and Layout Considerations).

5.5 Design and Townscape Guide 2009 (SPD1).

6 Recommendation

6.1 Members are recommended to TAKE NO FURTHER ACTION