

Committee	PLANNING COMMITTEE A	
Report Title	171 NEW CROSS ROAD, LONDON, SE14 - REQUEST FOR ENFORCEMENT ACTION	
Ward	New Cross	
Contributors	R Lockett	
Class	PART 1	Date: 30 AUGUST 2012

Background Papers

- (1) Case File - DE/414/171/TP
- (2) Adopted Unitary Development Plan (July 2004)
- (3) Local Development Framework (June 2011)
- (4) The London Plan (July 2011)
- (5) Circular 10/97: Enforcing Planning Control: legislative provisions and procedural requirements (2006)
- (6) National Planning Policy Framework (March 2012)
Paragraph 207: Enforcement

Designation

Adopted UDP - Existing Use

1.0 Introduction

This report deals with a breach of planning control at 171 New Cross Road regarding the construction of a timber shed structure on a flat roof area at first floor level to the rear of the site and whether it is expedient for the Council to instigate formal enforcement action in order to rectify the breach

2.0 Property/Site Description

- 2.1 The application site is a three storey mid terrace property on the east side of New Cross Road, between the junctions with Queens Road and Hatcham Park Road. At ground floor level the premises are used as a retail shop with the floors above being used for residential purposes.
- 2.2 The ground floor has previously been extended at the rear to the boundary of the site, which bounds the rear garden area of a residential block known as Smikle Court, which has frontages to Hatcham Park Road and Hatcham Park Mews to the rear. The extended ground floor has a flat roof which appears to serve as a roof terrace for the first floor accommodation and a balustrade of pieced concrete blocks has been constructed on top of the parapet. There is an existing conservatory structure at first floor level, which appears to have been constructed several years ago.
- 2.3 The property is within the Hatcham Conservation Area but it is not a listed building.

3.0 Planning History

- 3.1 In 1989 planning permission was granted for the erection of a single storey extension at the rear of 171 New Cross Road.
- 3.2 In December 1990 planning permission was refused for the erection of two extensions to provide a conservatory and an additional bedroom separated by a roof terrace at first floor level to the rear of 171 New Cross

- 3.3 In 2004, two planning applications were granted for new signage and alterations to the shopfront at ground floor level to the front.

4.0 Policy Context

Introduction

- 4.1 Section 38(6) of the Planning and Compulsory Purchase Act (2004) makes it clear that the exercise of statutory planning duties must be carried out in accordance with the development plan unless material considerations indicate otherwise. The development plan for Lewisham comprises the Core Strategy, Development Plan Document (DPD) (adopted in June 2011), those saved policies in the adopted Lewisham UDP (July 2004) that have not been replaced by the Core Strategy and policies in the London Plan (July 2011). The NPPF does not change the legal status of the development plan.

National Planning Policy Framework (March 2012)

- 4.2 The NPPF was published on 27 March 2012 and is a material consideration in the determination of planning applications. It contains at paragraph 14 a 'presumption in favour of sustainable development'. Annex 1 of the NPPF provides guidance on implementation and states, in paragraph 211, that policies in the development plan should not be considered out of date just because they were adopted prior to the publication of the NPPF. At paragraphs 214 and 215, guidance is given on the weight to be given to policies in the development plan. In summary, this states that for a period of 12 months from publication of the NPPF, decision takers can give full weight to policies adopted since 2004, even if there is limited conflict with the NPPF. Following this period, weight should be given to existing policies according to their consistency with the NPPF.
- 4.3 Officers have reviewed the Core Strategy and saved UDP policies for consistency with the NPPF and consider there is no issue of significant conflict. As such, full weight can be given to these policies in the decision making process, in accordance with paragraphs 211, 214 and 215 of the NPPF.
- 4.4 With regard to enforcement Paragraph 207 of the NPPF states:-
- "Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning decisions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so."*
- 4.5 In addition, Circular 10/97: Enforcing Planning Control: legislative provisions and procedural requirements (2006) is relevant.

London Plan (July 2011)

- 4.6 The London Plan policies relevant to this application are Policy 7.4 Local Character and Policy 7.6 Architecture.

Local Development Framework - Core Strategy (June 2011)

- 4.7 The Core Strategy was adopted by the Council at its meeting on 29 June 2011. The Core Strategy, together with the London Plan and the saved policies of the Unitary Development Plan, form the borough's statutory development plan. Relevant objectives and policies in the Core Strategy include Core Strategy Objective 10: Protect and enhance Lewisham's character, Policy 15: High quality design for Lewisham and Policy 16: Conservation areas, heritage assets, and the historic environment.

Adopted Unitary Development Plan (July 2004)

- 4.8 The saved policies of the UDP relevant to this application include URB 3 Urban Design, URB 6 Alterations and Extensions, HSG 4 Residential Amenity, HSG 12 Residential Extensions and URB 16 New Development, Changes of Use and Alterations to Buildings in Conservation Areas.

5.0 Consideration of Enforcement Action

- 5.1 The main issue for consideration is whether it is appropriate and expedient for the Council to serve an Enforcement Notice, under the Town and Country Planning Act 1990 (as amended) on those who have a legal interest in the land which is the subject of this report.

Breach of Planning Control

- 5.2 In 2011 it came to the Council's attention that a timber shed had been constructed on the flat roof of the existing rear extension. Planning permission has not been sought. The Council has confirmed by way of a site inspection that a timber structure has been constructed on the flat roof area at first floor level at the rear of the property.
- 5.3 The shed structure is approximately 2.5m long, 1.5m wide and 2.m high and has a flat roof. To date no retrospective application for the retention of the structure has been submitted.

Planning and Enforcement Considerations

- 5.4 The main considerations in this case are the impact of the structure on the character and appearance of the existing building, the Hatcham Conservation Area and any impact on the amenities of neighbouring occupiers.
- 5.5 The Planning (Listed Building and Conservation Areas) Act 1990 states that local authorities should pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

- 5.6 Core Strategy Policy 15 states that the Council will apply policy guidance to ensure highest quality design and the protection or enhancement of the historic and natural environment which is sustainable, accessible to all, optimises the potential of sites and is sensitive to local context. Core Strategy Policy 16 states that the Council will ensure that the value and significance of the borough's heritage assets and their settings, conservation areas, listed buildings, archaeological remains, registered historic parks and gardens and other non designated assets such as locally listed buildings, will continue to be monitored, reviewed, enhanced and conserved according to the requirements of government planning policy guidance, the London Plan policies, local policy and English Heritage best practice.
- 5.7 The shed structure is unsightly and is considered to be totally out of keeping with the surrounding area. The shed has been constructed from timber panels and is of makeshift appearance. The roof is covered with sheets of felt, which have been roughly draped over the structure.
- 5.8 This part of New Cross Road forms part of a shopping parade and the ground floor shop premises has been extended over the entire site. At first floor level over the substantial ground floor extension, the shed is at an elevated level and the structure appears obtrusive and incongruous. Such structures are not a traditional feature to upper floors and for this reason, the eye is drawn to it.
- 5.9 The height and location of the structure at the rear of the site means that it dominates the views along the rear of the terrace, and it can be seen from a large number of residential properties in New Cross Road and Hatcham Mews. It is directly opposite the rear of properties in Smikle Court, the rear elevation of which is approximately 10m from the structure. While several properties in this part of New Cross Road have single storey rear extensions at ground floor level, these are less visible, being enclosed by boundary walls and fences. The large timber framed shed at first floor level appears completely out of character.
- 5.10 A complaint has been received from a nearby resident who stated that the design and siting of the structure is out of keeping with the surroundings. These concerns are shared by the Council. The shed is inappropriate in this elevated location and is harmful to the character and appearance of the conservation area and its retention is considered unacceptable.
- 5.11 The shed, which is of poor design and construction, with a makeshift roof covering, is of generous proportions and is situated at first floor level and is considered to be harmful to visual amenity and overbearing, especially when viewed from the residential block to the rear and from the upper floors of adjacent properties.
- 5.12 The shed is considered to be out of character with the existing building and its surroundings, to the extent that it draws the eye and is obtrusive and unsightly.
- 5.13 Despite several attempts to gain access to the premises to inspect the interior, it has not been possible to gain access to the first floor of the building or to the flat roof, however the structure can be clearly seen from outside the site. It is not considered that any measures could be taken to improve its appearance to the extent that it would be appropriate to suggest submission of a retrospective application for the retention of the structure.
- 5.13 For these reasons, it is considered appropriate to take enforcement action to secure removal of the unauthorised timber shed.

6.0 Legal Implications

- 6.1 Government Policy advice to local planning authorities on the use of their enforcement powers is set out in The National Planning Policy Framework (2012). They have been given primary responsibility for taking whatever enforcement action may be necessary in the public interest.
- 6.2 The Local Government Ombudsman can make a finding of "maladministration" if a Council fails to take enforcement action when it is plainly necessary to do so.
- 6.3 For the planning system to be robust and to fully achieve its objectives, local planning authorities should take a proportionate approach to enforcement. Where developers or individuals have proceeded without due regard to the planning process, resulting in unacceptable impacts on the local community, local planning authorities should take appropriate action.
- 6.4 Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

7.0 Equal Opportunities and Human Rights Implications

- 7.1 Implications in relation to the Human Rights Act 1998 (HRA) have been identified in regards to the alleged breach. Action will therefore be relevant to the occupiers' Article 8 rights and potentially their Article 1 rights under the first protocol of the HRA, as set out below:

Schedule 1, Part I - The Convention

Article 8 Right to Respect for Private and Family Life

- (1) Everyone has the right to respect for his private and family life, his home and his correspondence.
- (2) There shall be no interference by a public authority with the exercise of his right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Schedule 1, Part II - The First Protocol

Article 1 Protection of Property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

8.0 Conclusion

- 8.1 The unauthorised shed is unacceptable as it is considered harmful to the character and appearance of the street scene and the host building. Accordingly, it is considered expedient to serve an Enforcement Notice to remedy this breach of planning control.
- 8.2 The shed is considered to be out of keeping with its surroundings due to its elevated position and design. It is over bearing and out of keeping with neighbouring properties which results in loss of amenity by reason of overlooking and visual intrusion, contrary to Policies URB 3 Urban Design , URB 6 Alterations and Extensions, HSG 4 Residential Amenity and HSG 12 Residential Extensions in the adopted Unitary Development Plan (July 2004) and Policy 15 High quality design for Lewisham of the Core Strategy (June 2011)

9.0 Requirements of Enforcement Notice

- 9.1 To secure the removal of the timber shed at first floor level to the rear of the property.

10.0 RECOMMENDATION

AUTHORISE THE HEAD OF LAW to take all necessary action to secure the removal of the unauthorised wooden shed at first floor level to the rear of 171 New Cross Road, SE14 for the following reason:-

- 10.1 The shed is considered to be unsightly, visually intrusive and out of keeping with its surroundings due to its elevated position and appearance. It is harmful to the visual amenity of nearby residents and to the character and appearance of the Hatcham Conservation Area and is thereby contrary to Policies URB 3 Urban Design, URB 6 Alterations and Extensions, HSG 4 Residential Amenity, HSG 12 Residential Extensions and URB 16 New Development, Changes of Use and Alteration to Buildings in Conservation Areas in the adopted Unitary Development Plan (July 2004) and Policy 15 High quality design for Lewisham and 16 Conservation Areas, heritage assets and the historic environment of the Core Strategy (June 2011).

Period for Compliance: 3 months