

## PLANNING COMMITTEE C

Date of Meeting: **THURSDAY, 12 APRIL 2012 TIME 7.30 PM**

PLACE: **ROOM 1 & 2, CIVIC SUITE, LEWISHAM TOWN HALL, CATFORD, SE6 4RU**

Members of the Committee are summoned to attend this meeting:

**Membership  
Councillors:**

**Paul Bell (Chair)  
Pauline Beck  
Liam Curran  
Alexander Feakes  
Peggy Fitzsimmons  
Joseph Folorunso  
Helen Gibson  
Alan Hall  
Madeliene Long  
John Paschoud**

The public are welcome to attend our committee meetings, however, occasionally committees may have to consider some business in private. Copies of reports can be made available in additional formats on request.

**Barry Quirk  
Chief Executive  
Lewisham Town Hall  
London SE6 4RU  
Date: Tuesday, 3 April 2012**

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Patricia Simpson Committee Co-ordinator  
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Committee	PLANNING COMMITTEE (C)	
Report Title	ELECTION OF CHAIR AND VICE-CHAIR	
Ward		
Contributors		
Class	PART 1	Date 12 APRIL 2012

To elect a Chair and Vice-Chair for the municipal year.

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Committee	PLANNING COMMITTEE (C)	
Report Title	DECLARATIONS OF INTERESTS	
Class	PART 1	Date: 12 APRIL 2012

### **Declaration of interests**

Members are asked to declare any personal interest they have in any item on the agenda.

### **Personal interests**

There are two types of personal interest :-

- (a) an interest which you must enter in the Register of Members' Interests\*
- (b) an interest where the wellbeing or financial position of you, (or a "relevant person") is likely to be affected by a matter more than it would affect the majority of in habitants of the ward or electoral division affected by the decision.

\*Full details of registerable interests appear on the Council's website.

("Relevant" person includes you, a member of your family, a close associate, and their employer, a firm in which they are a partner, a company where they are a director, any body in which they have securities with a nominal value of £25,000 and (i) any body of which they are a member, or in a position of general control or management to which they were appointed or nominated by the Council, and (ii) any body exercising functions of a public nature, or directed to charitable purposes or one of whose principal purpose includes the influence of public opinion or policy, including any trade union or political party) where they hold a position of general management or control

If you have a personal interest you must declare the nature and extent of it before the matter is discussed or as soon as it becomes apparent, except in limited circumstances. Even if the interest is in the Register of Interests, you must declare it in meetings where matters relating to it are under discussion, unless an exemption applies.

### **Exemptions to the need to declare personal interest to the meeting**

You do not need to declare a personal interest where it arises solely from membership of, or position of control or management on:

- (a) any other body to which your were appointed or nominated by the Council
- (b) any other body exercising functions of a public nature.

In these exceptional cases, unless your interest is also prejudicial, you only need to declare your interest if and when you speak on the matter .

### **Sensitive information**

If the entry of a personal interest in the Register of Interests would lead to the disclosure of information whose availability for inspection creates or is likely to create a serious risk of violence to you or a person living with you, the interest need not be entered in the Register of Interests, provided the Monitoring Officer accepts that the

information is sensitive. Where this is the case, if such an interest arises at a meeting, it must be declared but you need not disclose the sensitive information.

### **Prejudicial interests**

Your personal interest will also be prejudicial if all of the following conditions are met:

- (a) it does not fall into an exempt category (see below)
- (b) the matter affects either your financial interests or relates to regulatory matters - the determining of any consent, approval, licence, permission or registration
- (c) a member of the public who knows the relevant facts would reasonably think your personal interest so significant that it is likely to prejudice your judgement of the public interest.

### **Categories exempt from being prejudicial interest**

- (a) Housing – holding a tenancy or lease with the Council unless the matter relates to your particular tenancy or lease; (subject to arrears exception)
- (b) School meals, school transport and travelling expenses; if you are a parent or guardian of a child in full time education, or a school governor unless the matter relates particularly to the school your child attends or of which you are a governor;
- (c) Statutory sick pay; if you are in receipt
- (d) Allowances, payment or indemnity for members
- (e) Ceremonial honours for members
- (f) Setting Council Tax or precept (subject to arrears exception)

### **Effect of having a prejudicial interest**

If your personal interest is also prejudicial, you must not speak on the matter. Subject to the exception below, you must leave the room when it is being discussed and not seek to influence the decision improperly in any way.

### **Exception**

The exception to this general rule applies to allow a member to act as a community advocate notwithstanding the existence of a prejudicial interest. It only applies where members of the public also have a right to attend to make representation, give evidence or answer questions about the matter. Where this is the case, the member with a prejudicial interest may also attend the meeting for that purpose. However the member must still declare the prejudicial interest, and must leave the room once they have finished making representations, or when the meeting decides they have finished, if that is earlier. The member cannot vote on the matter, nor remain in the public gallery to observe the vote.

### **Prejudicial interests and overview and scrutiny**

In addition, members also have a prejudicial interest in any matter before an Overview and Scrutiny body where the business relates to a decision by the Executive or by a committee or sub committee of the Council if at the time the decision was made the member was on the Executive/Council committee or sub-committee and was present when the decision was taken. In short, members are not allowed to scrutinise decisions to which they were party.

Committee	PLANNING COMMITTEE (C)	
Report Title	MINUTES	
Ward		
Contributors		
Class	PART 1	Date: 12 APRIL 2012

### MINUTES

To approve the minutes of the meeting of Planning Committee (C) held on the 01 March 2012.

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Committee	PLANNING COMMITTEE (C)	
Report Title	1-5 MERCY TERRACE, LONDON, SE13 7UX	
Ward	Ladywell	
Contributors	Jan Mondrzejewski	
Class	PART 1	Date: 12 APRIL 2012

<u>Reg. No.</u>	DC/11/77223A & B
<u>Application dated</u>	28.04.2011, completed 31.05.2011, revised 29.11.2011, 02.03.2012 and 06.03.2012.
<u>Applicant</u>	Mr P Hutchinson Peter Hutchinson Architect
<u>Proposal</u>	The construction of a part two/part three storey building on the site, comprising ground floor commercial floorspace to be used as a farmers market/multi purpose hall for hire (sui generis), 2 one bedroom and 1 two bedroom self-contained flats, together with the provision of refuse and bicycle stores.
<u>Applicant's Plan Nos.</u>	09.06-E-1, 09.06-P-1B, 2B, 3B, 4B, 5B, 6A Design & Access Statement and Site Location Plan (revised 1st Dec 2011).
<u>Background Papers</u>	(1) Case File DE/873/1/TP (2) Adopted Unitary Development Plan (July 2004) (3) The London Plan (July 2011) (4) Lewisham Core Strategy (June 2011)
<u>Zoning</u>	UDP – Existing Use Ladywell Conservation Area PTAL 4

## **1.0 Property Site Description**

- 1.1 The application site comprises a vacant area of land at the south end of Mercy Terrace. The site is approximately 190 sq.m. in area and is irregularly shaped. Mercy Terrace is a cul-de-sac terminating in the road bridge over the Hayes to London Bridge railway line to the east of the site. The site is accessed from a mews at the rear of a terrace of late Victorian shops at the junction of Algernon Road and Ladywell Road. The mews is fronted on the east side by garages which may have originally been stables, as the roof areas feature a door way above the ground level entrance doors and a louvered roof vent at ridge level. The garage unit adjoining the open area of the application site is included in the application site area and is claimed to have established use for residential purposes.

- 1.2 The site is overgrown with vegetation including nettles, brambles and buddleia. There is a multi-stemmed sycamore tree in the rear yard of No 259 Algernon Road adjoining the boundary of the site. The canopy of the tree, when in leaf, is prominent in views from the railway bridge to the south of the site. The tree is not protected by a TPO and it is unlikely that it could be retained if a building was constructed on the application site close to this boundary. The application site also shows some signs of dumping but this is currently not such as to warrant service of a Section 215 Notice. The southern boundary of the site is close to workshops occupying arches under the bridge which are in use for engineering purposes. On the east side of Mercy Terrace is a modern industrial estate adjacent to the London Bridge/Hayes railway line. There are also stairs to the level of Ladywell Road in the south east corner of Mercy Terrace.
- 1.3 The parade of shops at Nos 251-259 Algernon Road date from c1890 and are 3 storeys in height fronting Algernon Road. However, they are four storeys at the rear with basements opening on to rear yards fronting the mews. The shops, mews garages and application site are in the Ladywell Conservation Area (designated in 2010). Ladywell railway station is located close to the site on the south side of Ladywell Road.

## **2.0 Planning History**

- 2.1 It is understood the site was formerly used for the storage of scaffolding. Planning records refer to the arches under the bridge as 1-5 Mercy Terrace. The application site appears to have no previous planning history.

## **3.0 Present Application**

- 3.1 The application is for planning permission for the construction of a part two/part three storey building on the site of 1-5 Mercy Terrace SE13 comprising a ground floor commercial area/multi purpose hall for hire, 2 one bedroom and 1 two bedroom, self-contained flats, together with the provision of rear roof terraces, refuse and bicycle stores. The application has been amended to include the external refurbishment of the adjoining stable/garage unit which is claimed to be an established residential use. This property is now included in the application site area. The ground floor of the proposed new building is intended as a space which could be hired out for community uses and craft markets.
- 3.2 The proposed building would be L-shaped, with the three storey element in the southern part of the site, stepping down to two storeys adjoining the adjacent garages.
- 3.3 The three storey element of the building is located close to the existing railway viaduct and includes a curved stairwell at the corner of the building surmounted by a water tower with monopitch roof, incorporating photovoltaic cells. The water tower forms part of a greywater recycling scheme which will collect roof water run-off in an underground tank. This will be pumped up to the roof top tank using solar powered pumps. The design of the proposed building has undergone several revisions which have featured adjustments to the design of the roof and elevations to Mercy Terrace and the bridge over the railway line.

- 3.4 Facing materials are proposed to be brick for the walls and zinc cladding to the roof and the water tower, although the roof will also feature photovoltaic panels. The first floor rear balconies at the rear of the building will be constructed in timber.
- 3.5 The plans show most of the ground floor as an L-shaped hall; the remainder of the ground floor would provide an entrance lobby for the flats above, together with refuse and cycle storage. The remainder of the site is shown as a yard, accessed from the private drive to the west of the site.

#### **4.0 Consultations and Replies**

##### Environment Agency

- 4.1 No reply

##### Network Rail

- 4.2 No reply

##### **Neighbours & Local Amenity Societies etc.**

##### Ladywell Village Improvement Group

- 4.3 No reply

##### Ladywell Society

- 4.4 The Society objects to the application on the following grounds:-

- (1) The ordnance survey red line site plan is inaccurate.
- (2) The development will result in the loss of trees visible from the public realm.
- (3) The development will result in the loss of biodiversity in the form of an open site which provides a habitat for wildlife.
- (4) The proposed development is out of scale with the adjoining coach houses
- (5) The use of zinc cladding and the tall water tower feature are incongruous features within the context of the local area

Further comments following consultation on revised plans.

- 4.5 The Society wishes to maintain its objections to the proposed development though it did not consider it necessary to have a local meeting. On the proposed coach house restoration, Plan 4B has contradictory references to the window materials. The applicant should make clear whether this will be UPVC or timber. Plans showing the proposed development in the context of the Algernon Road shops should be provided.

(Letters are available to Members).

## Highways & Transportation

- 4.6 There is a lack of information re ground floor uses, attendances, travel options, times of operation of uses etc. In addition, as far as the Department is aware, there is currently no domestic refuse collection service provided in this section of Mercy Terrace and there are no suitable access arrangements for domestic refuse collection vehicle access.

## Amenities Societies Panel

- 4.7 Objection. No description of trees on site. Relationship to context not clear. Access unsuitable for large vehicles/refuse collection vehicles. The location would not provide pleasant living accommodation for the proposed residential development.

## **5.0 Policy Context**

### National Planning Policy Framework

- 5.1 Paragraph 131 states that in determining planning applications, local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation and the desirability of new development making a positive contribution to local character and distinctiveness.

### The London Plan

- 5.3 The London Plan policies relevant to this application are:

Policy 3.1 Ensuring Equal Life Chances for All  
Policy 3.3 Increasing housing supply  
Policy 3.4 Optimising housing potential  
Policy 3.5 Quality and design of housing developments  
Policy 3.9 Mixed and balanced communities  
Policy 3.16 Protection and Enhancement of Social Infrastructure  
Policy 5.2 Minimising carbon dioxide emissions  
Policy 5.3 Sustainable design and construction  
Policy 5.7 Renewable energy  
Policy 5.13 Sustainable drainage  
Policy 5.14 Water quality and wastewater Infrastructure  
Policy 5.15 Water use and supplies  
Policy 6.13 Parking  
Policy 7.1 Building London's neighbourhoods and communities  
Policy 7.2 An inclusive environment  
Policy 7.3 Designing out crime  
Policy 7.4 Local character  
Policy 7.6 Architecture  
Policy 7.8 Heritage Assets and Archaeology

### Lewisham Core Strategy

- 5.4 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, is the borough's statutory development plan.
- 5.5 Relevant Policies in the Core Strategy are Policy 1, Housing provision, mix and affordability, Policy 8, Sustainable design and construction and energy efficiency, Policy 14 Sustainable transport and movement, Policy 15 High quality design for Lewisham, Policy 16 Conservation areas, heritage assets and the historic environment, Policy 19 provision and maintenance of community and recreational facilities.

### Adopted Unitary Development Plan (Adopted July 2004)

- 5.6 The saved policies of the Adopted Unitary Development Plan Policies relevant to this application are:-
- 5.7 URB 3 Urban Design, HSG 4 Residential Amenity, HSG 5 Layout and Design of New Residential Development, HSG 7 Gardens, LCE 1 Location of New and Improved Leisure, Community and Education Facilities.

### Supplementary Planning Documents

- 5.8 Residential Design Standards  
Ladywell Conservation Area Character Appraisal

## **6.0 Planning Considerations**

- 6.1 The main planning considerations relate to urban design/impact on the Conservation area, the principle of the proposed community hall use at ground floor level, impact on neighbouring properties, the quality of the proposed residential accommodation and transport/servicing.

### Urban Design and Impact on the character and appearance of the Conservation Area

- 6.2 It is likely that the present open site was originally occupied by the same type of garage/stable units which survive to the north of the application site. The site is considered to be of limited value for wildlife conservation purposes due to its restricted size and the fact that it is isolated by roads and buildings from the narrow wildlife corridor adjoining the railway. The site also shows evidence of dumping and is not considered to be an attractive feature of the Conservation Area. As noted earlier, the only significant tree likely to be affected by the development is a multi-stemmed sycamore on an adjoining site which would not be considered suitable for TPO status. There is therefore no objection in principle to the development of the site with a building of suitable scale and attractive design.
- 6.3 The proposed building in terms of scale is considered to be at the upper end of acceptability and the applicant's agent, in consultation with officers, has reworked the form and detailed elevations of the building to produce a scheme of an acceptable quality for a site in a conservation area. The building will be visible

from the road bridge, although not as prominent as Lister House on the south side of the bridge abutment. The most striking feature of the proposed building when viewed from the bridge, will be the water tower on top of the stairwell with its curved side. As an obviously contemporary design the applicant has chosen a modern material as a roof covering. This will be pre-patinated zinc which will have a dull rather than shiny metallic appearance. The use of a living roof was suggested by officers but rejected by the applicant's agent on grounds of cost, maintenance issues and incompatibility with the proposed grey water recycling system.

- 6.4 The decision to include the external refurbishment of the end coach house/garage in the scheme is a positive feature of the development and will enhance the character and appearance of the Conservation Area as well as the quality of the accommodation. The proposal will therefore enhance the significance and setting of a heritage asset.

#### Proposed Use

- 6.5 The scheme is a mixed use development with ground floor commercial floorspace; this is described on the application form as a multi-purpose hall for hire. The submitted Planning, Design and Access Statement sets out that it is proposed to run a farmers market on a regular basis and in addition the space would be available for a range of additional uses. The applicant has given examples including crafts exhibitions, yoga or pilates classes and social events of a local nature of the type that might take place in a village hall. A mix of uses of this type on the ground floor is considered to be a sui generis use including retail (A1) and non-residential institutions (D1 uses). D1 could also include non-residential educational use and religious worship. Given the restricted size of the ground floor area, which is a little over 100 sq metres, it is unlikely that these uses would generate a large amount of service traffic or on-street parking on a daily basis. Parking restrictions also apply in the local area and accessibility to public transport is reasonably good (PTAL 4).
- 6.6 While the range of uses suggested would be unlikely to give rise to significant disturbance to nearby residents, including the occupants of the flats above and those occupying flats above 251-259 Algernon Road, it is considered that unfettered commercial and D1 use would have the potential to cause disturbance, either from the uses themselves or from patrons coming and going. In order to protect the amenities of residents it is considered necessary to impose conditions to limit the range of uses and the hours of use. In addition conditions to prevent noise nuisance are recommended.
- 6.7 Officers do not consider that a B1 use would be unacceptable on the ground floor of the proposed building, however this specific use has not been requested at this stage.

#### Impact on neighbouring properties

- 6.8 It is likely that the ground floor and basement accommodation at Nos 251-259 Algernon Road are currently in commercial use and the rear gardens/yards of these properties do not appear to be in use as residential gardens. Nos 155 and 157 are owned by the applicant. However, should this change and the gardens become used as amenity space, privacy screening to the first floor roof terrace

closest to the rear yard of No 259 would be a sensible precaution. Details of this is recommended to be required by condition.

#### Quality of the residential accommodation

- 6.9 The accommodation complies with the Council's housing design standards SPD. The applicant has been advised of the need for new residential development to comply with Code for Sustainable Homes Level 4 and the fact that this will be a condition of planning permission. The applicant considers that this standard can be met and that the grey water recycling scheme, of which the water tower is a feature, will assist in this process.

#### Transport and Servicing

- 6.10 In view of the small number of flats proposed it is considered that a car-free scheme would be appropriate in this location. Cycle storage can be accommodated within the development. It is not considered that the possible lack of a current refuse collection service in Mercy Terrace would prevent the grant of planning permission. The scheme makes provision for refuse storage within the site area for the residential component and commercial refuse can be dealt with via a private contract. The yard area would be able to provide for storage of commercial refuse.

### **7.0 Consultations**

- 7.1 The objection of the Ladywell Society has been addressed in the above report. One of the former stables in the applicant's ownership is to be refurbished as part of this proposal. The applicant has confirmed that the proposed window frames for the coach house will be in timber rather than UPVC. The site plan has also been amended to show the stable as being within the application site. Adjoining properties fronting Algernon Road are within the ownership of the applicant.
- 7.2 In terms of the Highways and Transportation comments, the small size of the ground floor hall means that traffic generation is unlikely to be large.

### **8.0 Conclusion**

- 8.1 In view of the above considerations, the application is recommended for approval.

### **9.0 Summary of Reasons for Grant of Planning Permission**

- 9.1 On balance, it is considered that the proposal satisfies the Council's Land Use and environmental criteria, and is in accordance with Policy 1, Housing provision, mix and affordability, Policy 8, Sustainable design and construction and energy efficiency, Policy 14 Sustainable transport and movement, Policy 15 High quality design for Lewisham, Policy 16 Conservation areas, heritage assets and the historic environment, Policy 19 provision and maintenance of community and recreational facilities of the Council's adopted Core Strategy (June 2011) and Policies URB 3 Urban Design, HSG 4 Residential Amenity, HSG 5 Layout and Design of New Residential Development, HSG 7 Gardens, LCE 1 Location of New and Improved Leisure, Community and Education Facilities in the adopted Unitary Development Plan (July 2004).

9.2 It is considered that the proposal is appropriate in terms of its form and design and would not result in material harm to the appearance or character of the surrounding area, or the amenities of neighbouring occupiers. The proposal is thereby in accordance with Policies Policy 1, Housing provision, mix and affordability, Policy 8, Sustainable design and construction and energy efficiency, Policy 14 Sustainable transport and movement, Policy 15 High quality design for Lewisham, Policy 16 Conservation areas, heritage assets and the historic environment, Policy 19 provision and maintenance of community and recreational facilities of the Council's adopted Core Strategy (June 2011) and Policies URB 3 Urban Design, HSG 4 Residential Amenity, HSG 5 Layout and Design of New Residential Development, HSG 7 Gardens, LCE 1 Location of New and Improved Leisure, Community and Education Facilities in the adopted Unitary Development Plan (July 2004).

**10.0 RECOMMENDATION: GRANT PERMISSION** subject to the following conditions:-

- (1) B01 Facing Materials - New Buildings
- (2) B04 Sample Brick Panels
- (3) B09 Plumbing or Pipes
- (4) C11 Construction Hours
- (5) L01 Planting, Paving, Walls etc
- (6) The development hereby approved shall not be occupied until restoration of the external envelope of the existing stable/coach house building adjoining the new structure has been implemented in accordance with plans hereby approved and Condition 1 and 2 of this permission.
- (7) No music, amplified sound system or other form of loud noise (such as singing or chanting) shall be used or generated on the ground floor of the building which is audible outside the premises or within adjoining residential properties.
- (8)
  - (i) The development hereby approved shall achieve a Code for Sustainable Homes rating of minimum Code Level 4.
  - (ii) Prior to commencement of development, a Design Stage Assessment undertaken by a suitably qualified Assessor shall be submitted to and approved in writing by the local planning authority to demonstrate compliance with (i).
  - (iii) Within 3 months of the building being occupied, evidence shall be submitted to demonstrate full compliance with the requirements of this condition, which shall include a Post Construction Certificate issued by a suitably qualified Assessor.
- (9) No development shall commence on site until details of screening to the first floor roof terrace adjoining the rear yard of no 259 Algernon Road has been submitted to and approved in writing by the local planning authority and the approved screening shall be provided before any of the flats are occupied and shall be retained in perpetuity.



- (10) No work on site shall commence until details of the proposed grey water recycling system have been submitted to and approved in writing by the Council and the approved works shall be implemented in full before the occupation of the premises and retained in perpetuity thereafter unless the Council gives its consent in writing to any variation.
- (11) The ground floor premises shall not be used between the hours of 10.30 pm and 8 am on any day of the week.
- (12) The ground floor premises shall not be used for religious worship.
- (13) No works shall commence on site until details, including relevant drawings and specifications, of the construction of the ground floor ceilings and walls of the building hereby approved, and the proposed works of soundproofing against airborne and impact sound have been submitted to and approved in writing by the local planning authority. The use of the premises shall not commence until the soundproofing works have been implemented in accordance with the approved details. The soundproofing shall be retained permanently in accordance with the approved details.

### Reasons

- (6) To ensure that the proposed development safeguards the special architectural or historic character of the Ladywell Conservation Area and to comply with Policy 16 Conservation areas, heritage assets and the historic environment of the adopted Core Strategy (June 2011) and Policy URB 16 New Development, changes of use and Alterations to Buildings in Conservation areas in the adopted Unitary Development Plan (July 2004).
- (7) Standard Reason N03R
- (8) & (10) To ensure the development achieves the maximum possible in respect of energy and carbon emissions and to comply with Policy 8 Sustainable design and construction and energy efficiency of the adopted Core Strategy (June 2011).
- (9) To avoid the direct overlooking of adjoining properties and consequent loss of privacy thereto and to comply with Policies URB 3 Urban Design and HSG 5 Layout and Design of New Residential Development in the adopted Unitary Development Plan (July 2004).
- (11) & (12) To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties and to comply with Policies ENV.PRO 9 Potentially Polluting Uses, ENV.PRO 11 Noise Generating Development, HSG 4 Residential Amenity and STC 9 Restaurants, A3 Uses and Take Away Hot Food Shops in the adopted Unitary Development Plan (July 2004).
- (13) N01R

### Informative

Construction Sites Code of Practice

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This plan forms no part of a planning application Page 17

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Committee	PLANNING COMMITTEE (C)	
Report Title	84-86 WICKHAM ROAD SE4 1NF	
Ward	Brockley	
Contributor	Richard Lockett	
Class	PART 1	12 APRIL 2012

## **REQUEST FOR ENFORCEMENT ACTION**

### **Background Papers**

- (1) Case File DE/85/86/TP / EN/08/00079
- (2) Adopted Unitary Development Plan (July 2004)
- (3) PPS 1: Delivering Sustainable Development
- (4) PPG18: Enforcing Planning Control

### **1.0 Introduction**

- 1.1 This report explains the reasons why the council cannot take enforcement action against the alleged breach of Condition (5) of the planning consent - DC/02/51706 granted on 3/12/2002 for *the alteration and conversion of 86 Wickham Road SE4 to provide 4 two bedroom self contained flats, together with the conversion of the attics of 84 & 86 Wickham Road to provide a one bedroom self contained flat.*

### **2.0 Property/Site Description**

- 2.1 The site consists of a pair of 1860 four-storey semi-detached properties situated on the western side of Wickham Road, which is located within the Brockley Conservation Area. The surrounding area is predominantly residential in character.
- 2.2 The building at 86 Wickham Road contains four two bedroom self contained flats as well as a one bedroom self contained flat in the shared roof space of 84 and 86, neither building is listed.
- 2.3 To the rear of the properties is a garden area [which is the subject of this report] and backs on to a pedestrian path connecting Wickham Gardens to Harefield Road.

### **3.0 Planning History**

- 3.1 A planning application - DC/02/51706 was submitted for: *'The alteration and conversion of 86 Wickham Road SE4, to provide 4 two bedroom self contained flats, together with the conversion of the attics at 84 & 86 Wickham Road to provide a one bedroom self contained flat'*. This application was granted consent on 3/12/2002. Condition (5) of this approval states:

***The whole of the existing amenity space, as shown on the permitted plans, shall be retained permanently for the benefit of the occupiers of the residential units hereby approved.***

- 3.2 A planning application - DC/06/64266 was submitted for: *'The construction of 3 single storey two bedroom mews houses at the rear of 84-86 Wickham Road SE4, together with the provision of 6 bicycle spaces and a bin store'* and refused permission on 25/1/2007 for the following reasons:

- (1) *The loss of these garden areas, with their planting and general greenery, would fail to preserve or enhance the character and appearance of the Conservation Area and would therefore be contrary to Policies URB 16 New Development, Changes of Use and Alterations to Buildings in Conservation Areas and HSG 8 Backland and In-fill Development in the adopted Unitary Development Plan (July 2004) and the Brockley Conservation Area Supplementary Planning Document (Adopted February 2006).*
- (2) *The loss of these garden areas and the habitat that they provide would have a detrimental impact on biodiversity within the local area and would therefore be contrary to Policies HSG 8 Backland and In-fill Development and OS 13 Nature Conservation, in the adopted Unitary Development Plan (July 2004).*
- (3) *The proposed development and the loss of the opportunity for parking/garaging at this site is likely to have a detrimental effect on the appearance of the Conservation Area by giving rise to additional kerbside parking and creating pressure for use of front gardens for parking, contrary to Policy URB 16 New Development, Changes of Use and Alterations to Buildings in Conservation Areas in the adopted Unitary Development Plan (July 2004) and the Brockley Conservation Area Supplementary Planning Document (Adopted February 2006).*

3.3 The owner of the property exercised his right of appeal to the Planning Inspectorate against the council's decision not to grant planning consent however the Inspector agreed with the council's reasons for refusing planning permission and dismissed the appeal.

### **Enforcement History**

3.4 In 2008, the Council received a complaint regarding an alleged breach of Condition (5) of planning consent - DC/02/51706. The complainant stated that an existing fence in the rear garden area had not been removed and as a result the occupiers of the residential units contained within 86 Wickham Road (along with the roof space of 84-86) were unable to use this garden area.

3.5 A site visit established that an existing fence was in situ separating the bottom parcel of land from the main section of the garden. However, the access gate within the fence was not secured and therefore residents were able to access the separated area of garden land should they choose to do so.

3.6 It was established that following completion of the development, leases for each of the individual flats were sold as follows:

- Flat A - sold in February 2006
- Flat B - sold in June 2004
- Flat C and D - sold in May 2006 and Flat E in September 2006.

All five leases were verified by individual solicitors and signed by the purchasers.

3.7 The lease for Flats A and B included the use of outdoor rear garden space. The lease for Flats C, D and E did not include the use of outdoor rear garden space.

- 3.8 The use of the parcel of land to the rear of the garden was excluded from all of the above leases.
- 3.9 The issue surrounding the legality of the leases of the Flat C, D and E in relation to the use of the rear garden area is a civil matter and not one that the planning department can get involved with.
- 3.10 The issue surrounding the alleged breach of a planning condition can be addressed by the planning department. It is the responsibility of the free holder to ensure that all relevant conditions of the approved permission are adhered to.
- 3.11 Following investigation where it was established that despite the fence being in place the area of land in question was accessible, a report was taken to Planning Committee (C) on 9 December 2010 recommending that no further action be taken in respect of the alleged breach of Condition 5. However, the Planning Committee decided to overturn the officers recommendation not to take enforcement action and resolved to authorise the head of legal services to take all necessary legal action to serve a Breach of Condition Notice to secure compliance with Condition (5) of the planning permission issued under reference DC/02/51706.
- 3.12 Although condition 6 was never submitted for approval the committee did agree with the officer and considered it not expedient to take enforcement action against this breach of planning condition as eight years had elapsed since the approved consent and four years since the occupation of the development.
- 3.13 Following the committee resolution on 9 December 2010 Officers held further discussions with the Council's Legal Team regarding the appropriate course of action to be taken. The Council's Legal Team considered that to serve a breach of condition notice without proof that condition 5 had been breached would render the notice ineffective and may result in costs being awarded against the council for unreasonable behaviour [should an application be made]. It was therefore recommended to carry out a further site visit to establish whether there is fact a breach of Condition 5 taking place and if no breach found re-present an amended report to the committee detailing the reasons why a Breach of Condition Notice should not be issued .

#### **4.0 Alleged Breach of Planning Control**

- 4.1 Condition 5 of planning consent - DC/02/51706 stated that: *'The whole of the existing amenity space, as shown on the permitted plans, shall be retained permanently for the benefit of the occupiers of the residential units hereby permitted'*.
- 4.2 It is the opinion of some of the residents of 86 Wickham Road that, as there is a fence and gate erected to the rear of the garden, there is a portion of land which is not *'retained permanently for the benefit of the occupiers'*. The residents suggest that the fence and gate preclude them from using this piece of land as amenity space and therefore that condition (5) has been breached.

## **5.0 Policy Context**

### Planning Policy Statement 1: Delivering Sustainable Development

- 5.1 Paragraph 18 under the heading of the Protection and Enhancement of the Environment states that 'the condition of our surroundings has a direct impact on the quality of life. Planning should seek to maintain and improve the local environment and help to mitigate the effects of declining environmental quality'

The policy goes further to say that '...decisions should be based on: – up-to-date information on the environmental characteristics of the area; the potential impacts, positive as well as negative, on the environment of development proposals (whether direct, indirect, cumulative, long-term or short-term) and recognition of the limits of the environment to accept further development without irreversible damage.'

- 5.2 PPG 18 Enforcing Planning Control provides guidance to local authorities on the use of enforcement powers.

## **6.0 Planning Considerations**

- 6.1 The main planning considerations in this case is whether it is possible for the Council to serve a Breach of Condition Notice, under Section 187A of the Town and Country Planning Act 1990 (As amended) on all who have a legal interest in the land which is the subject of this report.

## **7.0 Details**

- 7.1 The Council has sought to investigate whether a breach of planning control has actually taken place by virtue of non compliance with Condition 5. As part of the investigation Officers have visited the site (on more than one occasion) to check whether the garden is freely accessible to all occupiers of the property or whether the garden is locked/fenced off and therefore only accessible to those persons with specified access. At the time of the last site visit (16<sup>th</sup> March 2012) Officers noted that there was a fenced off parcel of land to the rear, however, the access gate adjacent the boundary with 88 was not locked and clearly open. Consequently this area could also be accessed and used by occupiers of all of the flats within this property and therefore no breach is currently taking place.
- 7.2 It is important to note that Officers undertook an un-planned site visit which was not pre-arranged with the landowner and therefore were able to see the indisputable circumstances on site.
- 7.3 The Council has been unable to establish a breach of condition 5 of planning consent - DC/02/51706 at the above address and therefore at this present moment in time it is not appropriate or reasonable to issue a Breach of condition Notice or take further enforcement action.
- 7.4 Whilst a fence is in place, as discussed above this fence does preclude access into the area of land in question. Furthermore, the fence is considered to be development which has existed in excess of four years following the completion of the approved consent and therefore it is considered to be immune from enforcement action.



7.5 The council may only issue a Breach of Condition Notice when a breach of a planning condition has been established and the recipient would have had no right of appeal. The defence against such a notice is limited; namely that the "freeholder" is no longer in control of the land or that the freeholder can show that every effort has been made to comply with the condition. The penalty fine on conviction is a maximum of £2,000.

## **8.0 Legal Implications**

8.1 Government Policy advice to Local Planning Authorities on the use of their enforcement powers is set out in Planning Policy Guidance Note No 18. PPG 18 sets out the issues which local planning authorities should bear in mind when taking enforcement action as follows:-

They have been given primary responsibility for taking whatever enforcement action may be necessary in the public interest.

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.

The decisive issue in every case is whether the breach of planning control would unacceptably affect public amenity or the existing use of land or buildings meriting protection in the public interest.

Enforcement action should always be commensurate with the breach of planning control involved.

Where attempts to persuade the site owner or occupier to voluntarily remedy the breach are unsuccessful, negotiation on that issue should not be allowed to hamper the taking of whatever formal enforcement action, which may be required.

## **9.0 Equal Opportunities and Human Rights Implications**

9.1 Implications in relation to the Human Rights Act 1998 (HRA) have been identified in regards to the alleged breach of a condition 5 of planning consent - DC/02/51706. 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.

#### **10.0 Conclusion**

10.1 The investigating officer has referred the matter to the Planning Committee for a formal decision with a recommendation not to take further action for the following reasons:

- The Council has been unable to establish a breach of condition 5 of planning consent - DC/02/51706 at the above address and therefore at this present moment in time it is unable to issue a Breach of condition Notice or take further enforcement action.
- The fence in question is considered to be development which has existed in excess of four years following the completion of the approved consent and therefore it is considered to be immune from enforcement action

#### **11.0 RECOMMENDATION**

Authorise officers to take no further action in respect of the alleged breach of Condition (5) of planning permission - DC/02/51706.

# 86 WICKHAM ROAD



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