

Committee	PLANNING COMMITTEE C	
Report Title	6 MARSALA ROAD SE13 7AF	
Ward	Ladywell	
Contributors	Richard Lockett	
Class	PART 1	24 MAY 2012

REQUEST FOR ENFORCEMENT ACTION

Background Papers

- (1) Case File LE/809/6/TP
- (2) Adopted Unitary Development Plan (July 2004)
- (3) Adopted Core Strategy (June 2011)
- (4) The London Plan
- (5) Circular 10/97: Enforcing planning control: legislative provisions and procedural requirements (2006)
- (6) National Planning Policy Framework (March 2012) Paragraph 207: Enforcement

Zoning

Adopted UDP - Existing Use

1.0 Introduction

- 1.1 This report deals with a breach of planning control at 6 Marsala Road regarding the construction of a timber framed conservatory 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 property is an extended two storey terraced dwelling house on the western side of Marsala Road, close to the junction with Ellerdale Street. The terrace was constructed as part of the Viney Road Estate in 1952.
- 2.2 The property does not form part of a conservation area and is not a listed building.

3.0 Planning History

- 3.1 In June 2011, planning consent was refused for the retention of a conservatory (with an altered roof) to the rear of 6 Marsala Road for the following reason:

By virtue of its extent, scale, appearance and relationship to adjoining properties, the extension is considered to be unduly obtrusive, dominant, out of keeping with its surroundings and has an overbearing impact on adjoining properties to the detriment of the amenities of their occupants and is incompatible with the scale and character of the existing property, 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).

- 3.2 In September 2011 planning consent was refused for the retention of a conservatory to the rear of 6 Marsala Road SE13.

By virtue of its depth, appearance, extensive use of glazing to the flank walls and relationship to adjacent properties, the extension is considered to be out of keeping with its location, out of scale with its surroundings and of poor design and would result in loss of privacy and amenity to the adjoining properties, contrary to Policy 15: High quality design for Lewisham in the adopted Core Strategy (June 2011) and 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).

4.0 Planning Enforcement History

- 4.1 In March 2011 the Council received complaints regarding the construction of a timber framed conservatory to the rear of 6 Marsala Road. Following an investigation, two applications were made for its retention (with altered designs), both of which were subsequently refused.

5.0 Breach of Planning Control

- 5.1 Without the benefit of planning consent, the construction of a timber framed conservatory to the rear of 6 Marsala Road.

6.0 Policy Context

6.1 National Policy

Circular 10/97: Enforcing planning control: legislative provisions and procedural requirements (2006)

National Planning Policy Framework (March 2012)

Paragraph 207: Enforcement

Lewisham Core Strategy

- 6.2 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. The following strategic objectives, spatial policies and cross cutting policies of the Strategy are relevant to this case.

Objective 10: Protect and enhance Lewisham's character

Policy 15: High quality design for Lewisham

Unitary Development Plan (July 2004)

- 6.3 Retained UDP policies that are relevant to the case are:

Policy URB 3: Urban Design

Policy URB 6: Alterations and Extensions

Policy HSG 4: Residential Amenity

7.0 Consideration of Enforcement Action

- 7.1 Retrospective planning permission has already been sought in regards to this rear conservatory. Having considered Council Policy, the structure was refused planning consent.
- 7.2 The main planning considerations in this case are the impact of the extension on the character of the existing building, the surrounding area and any impact upon the amenities of neighbours.
- 7.3 The timber extension, which is constructed to the rear of an existing brick built extension, is considered to be excessively large and out of scale with the existing building and surroundings. The combined depth of 8.2m from the rear wall results in extensions to the rear covering the same footprint as the original house. This is considered excessive, particularly in the context of the modest scale of the original terraced property which has a narrow rear garden.
- 7.4 The materials used for the construction of the extension are out of character with the existing property, which is built in brickwork. As stated above the ground floor elevation originally had a rendered finish. Whilst a timber finish may be acceptable for a shed or a garden building, the use of timber in the construction of this extension adds to the incongruous appearance of the structure.
- 7.5 Alterations to the existing flat roof of the timber base would add to the dominance and draw further attention to this incongruous extension and applications proposing such have already been refused.
- 7.6 The timber extension is completely out of character with the existing property and those in the surrounding area and has a detrimental impact upon both neighbouring properties due to its excessive depth.

8.0 Proportionality

- 8.1 The Council has tried informally to resolve the breach of planning control through informal negotiations however, this course of action has failed, therefore based on the information in this report it has been concluded that no action short of the proposed enforcement described above can uphold Council policies and remove the harm caused by this breach of planning control. In these circumstances the service of an enforcement notice is considered both necessary and expedient and is considered to be a proportionate response to the breach of planning control in this case.
- 8.2 The works that have been undertaken do not constitute a criminal offence and therefore the owner cannot be prosecuted. The service of an enforcement notice is considered to be a more appropriate and swifter enforcement tool than applying for an injunction under Section 187B of the 1990 Act. It is also more cost effective for both the local planning authority and the recipient of the notice to appeal and otherwise deal with.
- 8.3 All other forms of action to secure compliance with planning control, uphold council policies and protect the amenities of local residents have been considered and cannot effectively be achieved by any lesser means than the action recommended. The Council consistently takes enforcement action against similar

breaches of planning control and successfully defends the Council's decision in subsequent appeals.

9.0 Legal Implications

9.1 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:-

- (1) They have been given primary responsibility for taking whatever enforcement action may be necessary in the public interest.
- (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.
- (3) 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.
- (4) Enforcement action should always be commensurate with the breach of planning control involved.
- (5) 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.

10.0 Equal Opportunities and Human Rights Implications

10.1 Implications in relation to the Human Rights Act 1998 (HRA) have been identified in regard to the unauthorised construction of this conservatory. 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. Although enforcement action may impact upon these rights, action taken will be "in accordance with the law" and in pursuit of the aims set out in the HRA itself, namely:

For Article 8, in the interest of the economic well-being of the country, for the prevention of disorder or crime and for the protection of the rights and freedoms of others and;

For Article 1, to control the use of property in accordance with the general interest.

The HRA does not impair the right of the state to enforce such laws as it deems necessary in the public interest and it is therefore considered that the proposed action and its objectives of securing compliance with planning control, upholding its adopted and emerging policies and protecting the amenities of local residents, cannot be achieved by any lesser measures. The action to be taken is proportionate to the harm arising and outweighs the impact on Article 8 and Article 1.

11.0 Conclusion

11.1 By virtue of its extent, scale, appearance and relationship to adjoining properties, the extension is considered to be unduly obtrusive, dominant, out of keeping with its surroundings and has an overbearing impact on adjoining properties to the detriment of the amenities of their occupants and is incompatible with the scale and character of the existing property, 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).

12.0 Requirements of Enforcement Notice

12.1 To secure the removal of the timber framed conservatory to the rear of the property.

13.0 RECOMMENDATION

13.1 Authorise the Head of Law to take all necessary action to secure the removal of the conservatory to the rear of 6 Marsala Road for the following reason:-

13.2 By virtue of its extent, scale, appearance and relationship to adjoining properties, the extension is considered to be unduly obtrusive, dominant, out of keeping with its surroundings and has an overbearing impact on adjoining properties to the detriment of the amenities of their occupants and is incompatible with the scale and character of the existing property, 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).

Period of Compliance:

6 months.