

Committee	PLANNING COMMITTEE C	
Report Title	2 SYDENHAM PARK ROAD, SE26 4ED	
Ward	Forest Hill	
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Class	PART 1	24 MAY 2012

REQUEST FOR ENFORCEMENT ACTION

Background Papers

- (1) Case Files - LE/499/2/TP
- (2) Adopted Unitary Development Plan (July 2004)
- (3) Adopted Core Strategy (June 2011)
- (4) The London Plan (July 2011)
- (5) National Planning Policy Framework

Zoning

Adopted UDP - Existing Use

1.0 Introduction

- 1.1 This report deals with a breach of planning control at 2 Sydenham Park Road regarding an unauthorised change of use from use as a single dwellinghouse to use as seven self-contained flats 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 property is situated on the corner of Sydenham Park Road and Dartmouth Road and is a substantial Victorian detached property which was used for a number of years as a group home by Phoenix House and subsequently as a children's day nursery. Following planning permission in 2008, the property returned to its original use, as a single dwellinghouse. The site lies within the Sydenham Park Conservation Area.

3.0 Planning History

- 3.1 Planning permission was granted in May 1981 for alterations and the use of 2 Sydenham Park Road as a group home for 10 persons plus a self-contained staff flat. (Registered No. 19065). This permission was limited until 30 April 1984 and was personal to London and Quadrant Trust in partnership with Phoenix House.
- 3.2 In June 1984, permanent planning permission was granted for the use of 2 Sydenham Park Road as a group home for 13 persons. Condition (1) attached to this permission stated that the permission shall be implemented only by a registered housing association and shall not ensure for the benefit of the land.
- 3.3 In August 2002, temporary planning permission was granted for the change of use of the property as a day nursery (Use Class D1) for a maximum of 39 children (Registered No. DC/01/49878) until 31 August 2004.
- 3.4 In May 2005, planning permission was granted for the continued use of the property as a permanent day nursery (Use Class D1) for a maximum of 39 children (Registered No. DC/04/57399)

3.5 In August 2008, planning permission was granted for the change of use of 2 Sydenham Park Road, from a day nursery to residential use (Registered No. DC/08/69505). The approved plans showed that the property would be reverted back to its original use as a single family dwelling, with four bedrooms. This permission was implemented and the property was rated as such for Council Tax purposes.

4.0 Planning Enforcement History

4.1 In June 2010 it was brought to the Council's attention that this property may have commenced use as 9 self contained flats. Planning consent had not been granted for the use of the property as nine self-contained units.

4.2 On 7 December 2011, the property was inspected by Council Officers. It was found that the property is currently being used to provide residential accommodation in the form of 7 self contained flats. Only one flat was visited but individual locked doors were found and no shared facilities, showing that the units were self-contained.

4.3 The following response was received from the Council Tax section: "2 Sydenham Park Road was Banded as a House as at 10 August 2007". Their records clearly show that the property was used as a single dwelling house, following the closure of the day nursery, in line with planning consent granted in 2008.

4.4 Further evidence obtained from Council Tax records confirm that the property was registered as 7 self-contained flats from 1 February 2009 and the separate units were added to the Electoral Register as Flats A – G on 1 December 2009.

5.0 Breach of Planning Control

5.1 Without the benefit of planning consent, the change of use from use as a single dwelling house to use as 7 self-contained flats.

6.0 Policy Context

National Planning Policy Framework

6.1 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 of the NPPF. In summary this states that (paragraph 211), 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.

6.2 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

- 6.3 Paragraph 207 of the NPPF states that 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 breaches.

London Plan

- 6.4 The London Plan was published in July 2011. Together with the Core Strategy and saved policies in the adopted Lewisham UDP (July 2004), the London Plan comprises the development plan for Lewisham. The policies that are relevant to the case are:-

Policy 3.3 Increasing housing supply
Policy 3.5 Quality and design of housing developments
Policy 3.9 Mixed and balanced communities

Lewisham Core Strategy

- 6.5 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
Spatial Policy 5: Areas of Stability and Managed Change
Policy 1: Housing provision, mix and affordability
Lewisham Housing Market Assessment 2007 – 2008 published December 2009.

Unitary Development Plan (July 2004)

- 6.6 Policy IRM 5 states that in circumstances where it is considered necessary in the public interest, the Council will take enforcement action against those who undertake development or carry out works without planning permission. Other retained UDP policies that are relevant to the case include HSG 9: Conversion of Residential Property and URB 16: New Development, Changes of Use and Alterations to Buildings in Conservation Areas, plus the Residential Standards (Supplementary Planning Document) (2006).

7.0 Consideration of Enforcement Action

- 7.1 The main planning consideration in this case is the loss of family accommodation, suitability of the premises for conversion and the standard of residential accommodation provided, taking into account the impact upon the amenity of current and future occupiers as well as neighbours.
- 7.2 Spatial Policy 5: Areas of Stability and Managed Change of the Lewisham Core Strategy, 1C. Conversions and the need to provide family houses states that to achieve mixed and balanced communities and preserve choice of accommodation size, it is necessary to protect a supply of family homes from conversions into smaller flats. The Council will therefore look critically at applications for conversions of family sized homes in these locations.

The size of newly converted dwellings will need to address housing need and the character of the area and take account of amenity issues, including traffic and parking impacts. The sub-division, as carried out, is therefore clearly in breach of Core Strategy Policy.

- 7.3 The Core Strategy gives more up to date guidance for Councils on how to deal with conversions of properties. The explanation of Spatial Policy 5 (Paragraph 6.146) of the Core Strategy relates to Areas of Stability and Managed Change states that:-
- “The vast majority of the borough's supply of three bed plus family housing is located in this strategy area. The Lewisham SHMA shows that 25% of the residential stock is in converted property, the highest percentage in southeast London. To achieve mixed and balanced communities and preserve choice of accommodation size it is necessary to protect a supply of family homes from conversions into smaller flats. The Council will therefore look critically at applications for conversions of family sized homes in these locations.”*
- 7.4 This policy is partly based on the Council’s Strategic Housing Market Assessment (SHMA). This document identifies housing need within the Borough and states that the need for market housing is focussed on market dwellings with at least 2 bedrooms. When collecting the evidence base for the SHMA a large surplus of smaller market housing was identified. The SHMA states *“given the significant growth in the private rented sector coupled with the identified surplus of 1-bed rented housing it may not be appropriate to encourage the continued conversion of large properties into smaller units for the rental market - unless the quality of such conversions can be clearly demonstrated”*.
- 7.5 One of the key findings of the SHMA is that the growth in the buy-to-let market in Lewisham has created a very large one bedroom private rented sector. This has mostly been created from conversion of family homes into flats. Lewisham requires additional market housing with at least 2-bedrooms.
- 7.6 The SHMA concludes that *“buy-to-let landlords have significantly re-shaped the local market by buying family sized properties and converting them into smaller self-contained units. This has, of course, always happened but it is the recent rate and scale of activity which is noticeable, as it has removed a volume of family-sized stock from the overall existing supply. This in turn, has effectively led to a scarcity premium being applied to the remaining family-sized private rented stock...the Council may wish to consider whether it is necessary to more tightly manage the rate at which the market converts family sized stock into smaller units”*.
- 7.7 ‘Areas of Stability and Managed Change’ provide quality living environments supported by a network of local services and facilities such as schools, medical facilities and parks/areas of open space. Such locations are entirely appropriate for the provision of family housing. Taking into account the clear and demonstrative need at the present time for family dwellings and having regard to the significant weight which should be attached to the objectives of the recently adopted Core Strategy, the LPA should be cautious about approving applications which result in the loss of family sized dwellings, unless it can be demonstrated that the property is not suitable for family occupation. For the same reason, it is considered expedient to take enforcement action in respect of this unauthorised conversion.

- 7.8 As explained above, it is not considered that there is any demonstrable reason why this property is no longer suitable for retention as a family sized dwelling. The property is located in a predominantly suburban area which benefits from local facilities, the property has off-street parking and a good sized rear garden thus rendering it entirely suitable for family occupation.
- 7.9 Core Strategy Policy 1: Housing provision, mix and affordability, requires an appropriate mix of dwellings to be provided within a development. When considering an appropriate mix regard should be given to the physical character of the site and its setting, previous use of the building, access to private gardens or communal areas for family dwellings, the effect on car parking, the surrounding housing mix and density and location of schools, shops, open space and other infrastructure requirements.
- 7.10 In this instance the existing building is capable of providing a high quality family sized dwelling which would benefit from private amenity space and the facilities required for truly sustainable family living. Consequently it is considered that the unauthorised conversion of 2 Sydenham Park Road into small units of accommodation is unacceptable in principle as it has resulted in the loss of a much needed family sized dwelling contrary to saved Policy HSG 9 of the UDP, Core Strategy Policy 1 and Spatial Policy 5 of the Core Strategy and Policy 3.5 Quality and Design of Housing Developments of The London Plan.
- 7.11 The saved Policy HSG 9 of the UDP states that:
- "The permanent conversion of larger dwelling houses into two or more self-contained units will be permitted provided that the scheme results in the provision of an increase in suitable accommodation.*
- The Council will normally require at least one family unit to be provided in every conversion scheme unless it is satisfied that the dwelling is unsuited for family occupation because of its location or character.*
- However, not all dwellings will be suitable for conversion. The conversion of dwellings will not be permitted where:*
- (a) the net floor space is less than 130 sq. m as originally constructed, and the dwelling is still suitable for family accommodation; and*
 - (b) the character of the buildings or neighbourhood or the amenities of neighbouring properties would be adversely affected..."*
- 7.12 Policy HSG 9 also states that the Council will normally require at least one family unit, of three bedrooms or more, with access to a garden, to be provided in every conversion scheme, unless it is satisfied that the dwelling is unsuitable for family occupation because of its location or character.
- 7.13 The premises is large and does have an original floor area well in excess of 130 square metres, so in theory, it could be considered to be of suitable size to accommodate a conversion into two or more flats.
- 7.14 In terms of its location, the property consists of a large detached building within a spacious corner plot, on the junction of Sydenham Park Road and Dartmouth Road. There is ample outdoor amenity space available on site to provide for the needs of a family unit.

7.15 At present, the property comprises seven one bedroom / studio self-contained units, with no provision of a family size unit and, for this reason, which is clearly contrary to Council Policy.

7.16 There are many examples of applications for planning permission for similar conversions being refused, which have been subsequently dismissed on appeal, such as the following:-

- (i) An appeal made against the refusal to grant planning permission dated 20 July 2009 in respect of the alteration and conversion of 64 St Asaph Road SE4 to provide 2 two bedroom self-contained flats was dismissed on 22 September 2010.

In his reasons for dismissal, the Inspector stated that Policy HSG 9 of the London Borough of Lewisham Unitary Development Plan 2004 (UDP) includes: *“there is a shortage of large family housing in the Borough”* and that it also requires that *“at least one family unit is provided in conversion schemes unless the property is unsuited for family occupation because of its location or character. A family unit is usually defined in the Council’s Supplementary Planning Document: Residential Development Standards as a dwelling with 3 or more bedrooms.”*

He also stated that the appeal property has a garden and is situated in a residential street. He therefore considered that, in terms of its character and location, the property was suitable for family occupation. As a family unit was not provided, he concluded that the appeal scheme had an unacceptable effect on the Council’s ability to determine and manage the mix and sizes of dwellings in the borough and therefore failed to comply with UDP Policy HSG 9.

- (ii) An appeal made against the refusal to grant planning permission dated 25 January 2011 in respect of the retention of 3 self-contained studio flats and 1 one bedroom self-contained flat at 42 Hafton Road SE6, was dismissed on 3 November 2011.

In dismissing the appeal, the Inspector stated that the unauthorised conversion did not comply with Policy HSG 9 of the London Borough of Lewisham Unitary Development Plan 2004, which *“also requires that conversions to provide at least one three bed family unit.”* The conversion had resulted in the reduction of the supply of family units of accommodation and in turn this had a harmful impact in terms of the mix of dwellings within the area and the balance of the community, which he found conflicts with UDP Policy HSG 9 and spatial strategy of the Core Strategy.

He also stated that the existing flats within the building were mainly ‘studio’ units with 1, one bedroom unit and he found that none of these met the minimum standards of the Lifetime Home requirements, which Policy 1 of the Core Strategy also requires to be met. He therefore found that the development conflicted with Policy 3.5 of the London Plan and Core Strategy Policy 1, as well as the Council’s Supplementary Planning Document: *Residential Development Standards* (2006), which seeks good design through the application of minimum room sizes for flat conversions and guidance relating to outlook and amenity.

- 7.17 It is felt that, as these examples are similar in many respects to the unauthorised conversion at 2 Sydenham Park Road and the Inspectors' decisions above strongly support the case for enforcement action to be taken as the unauthorised conversion has resulted in the loss of a single family dwelling house.
- 7.18 Policy URB16 states that the Council, having paid special attention to the desirability of preserving or enhancing the special architectural or historic character or appearance of its Conservation Areas, will not grant planning permission where the proposed changes of use are incompatible with the preservation of the character of the area, except where they are essential for the preservation of a building of value to that area.

Standard of Accommodation

- 7.19 Policy 3.5 Quality & Design of Housing Developments Core Strategy in The London Plan (July 2011), sets out minimum floor spaces standards for dwellings of different sizes. These are based on the minimum gross internal floor space required for new homes relative to the number of occupants and taking into account commonly required furniture and spaces needed for different activities and moving around, in line with Lifetime Home Standards.
- 7.20 Lewisham's Residential Development Standards (RDS) SPD also provides guidelines on the minimum room sizes for flat conversions, although this document is partly superseded by the Core Strategy and London Plan. The Residential Development Standards SPD states that studio flats in conversions are not encouraged.
- 7.21 The plans submitted with the conversion to residential scheme demonstrate the internal floor layout and the provision of 6 flats within the current unauthorised conversion has resulted in small and substandard units. The ground floor has been divided into one studio unit at the rear (measuring approx. 46 m²), 1 one-bedroom flat (20 m²) and one smaller studio (21 m²).
- 7.22 The upper floor mezzanine level has a further two studios (23 m² and 20 m²), with the other 2 studios on the main top floor (21 m² and 13 m²). These floor sizes are, with one exception, substantially below the London Plan target for one person dwellings.
- 7.23 Overall, officers consider that the standard of residential accommodation for future residents is poor and contrary to London Plan Policy 3.5 Quality & Design of Housing Developments of The London Plan and the Council's Residential Development Standards SPD.

Impact on Neighbours

- 7.24 As the property would still be in residential use, officers consider that the development would not cause undue noise or disturbance to the neighbouring properties.

Transport & Highways

- 7.25 Transport policies in the Core Strategy seek to encourage sustainable transport modes and maximum car parking standards. This application includes the provision of a car parking space at the front of the site which is considered to be appropriate given the location of the site in relation to bus services. Adequate cycle storage could be accommodated within the rear garden and this could be controlled by condition if the application were acceptable in all other respects. Notwithstanding the objections to this application in respect of the loss of the family dwellinghouse it is not considered that it would be reasonable to raise an objection on the grounds of issues associated with traffic or transport.

8.0 Proportionality

- 8.1 The Council has tried to resolve the breach of planning control through informal negotiations, including several visits to the site by officers, a number of letters sent to the owner/occupiers of the flats and the issue of a Planning Contravention Notice, however this course of action has failed. Therefore, it has been concluded that no action short of the proposed enforcement action 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.
- 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.
- 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 decisions 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 this change of use. 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 The unauthorised conversion of the property from a single family dwelling to use as seven self contained flats is unacceptable as it has resulted in the loss of a family dwelling and the converted units are cramped, of an unacceptable mix, with none considered to provide family accommodation. Accordingly, it is considered expedient to serve an Enforcement Notice to remedy this breach of planning control.

11.2 The unauthorised conversion is contrary to Policy 3.5 Quality & Design of Housing Developments Core Strategy in The London Plan (July 2011), Policy 1: Housing Provision, Mix and Affordability and Spatial Policy 5: Areas of Stability and Managed Change in the Local Development Framework - Core Strategy (June 2011), saved policies URB 16: New Development, Changes of Use and Alterations to Buildings in Conservation Areas and HSG 9: Conversion of Residential Property in the Council's adopted Unitary Development Plan (July 2004) and the Council's Residential Development Standards: SPD (August 2006).

12.0 Requirements of Enforcement Notice

12.1 To secure the cessation of the use of this property as 7 self-contained flats and reversion to use as a single family dwelling house.

13.0 RECOMMENDATION

13.1 Authorise the Head of Law to take all necessary action to secure the cessation of the use of this property as 7 self contained flats and reversion to use as a single family dwelling house, for the following reason:-

The use of the property as 7 self-contained flats, by reason of the loss of a satisfactory family unit, provision of sub-standard units of accommodation to the detriment of their present and future occupiers and an over-intensive use of the property, is contrary to Policy 3.5 Quality & Design of Housing Developments Core Strategy in The London Plan (July 2011), Core Strategy Policy 1: Housing provision, mix and affordability and Spatial Policy 5: Areas of Stability and Managed Change, saved policies URB 16: New Development, Changes of Use and Alterations to Buildings in Conservation Areas and HSG 9: Conversion of Residential Property in the Council's adopted Unitary Development Plan (July 2004) and the Council's Residential Development Standards: SPD (August 2006).

Period of Compliance:

Six Months.