

Committee	PLANNING COMMITTEE C	
Report Title	84-86 WICKHAM ROAD SE4 1NF	
Ward	Brockley	
Contributor	Richard Lockett	
Class	PART 1	24 MAY 2012

REQUEST FOR ENFORCEMENT ACTION

Background Papers

- (1) Case File DE/85/86/TP
- (2) Adopted Unitary Development Plan (July 2004)
- (3) Lewisham Core Strategy (June 2011)
- (4) 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 seeks a resolution to take no further action in relation to the alleged breach of Condition (5) of the planning permission dated 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*, Ref. DC/02/51706.

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 within the shared roof space of 84 and 86, neither building is listed. No. 84 is occupied as four flats.
- 2.3 To the rear of the properties are garden areas, the subject matter of this report, and which back on to a pedestrian path connecting Wickham Gardens to Harefield Road. The rear boundary of No. 86 is a timber fence with a pedestrian gate while that to No. 84 is a mix of brick wall, fence and double gates.
- 2.4 The rear garden of No. 86 is sub-divided with timber fencing into 3 parts; the rear part occupies approximately 50% of the total rear garden area. The rear garden of No. 84 is similarly sub-divided. There is an original brick boundary garden wall dividing the rear gardens of Nos. 84 and 86.

3.0 Planning History

- 3.1 Between 1979 and 2000 No. 86 Wickham Road was used, on the basis of limited period permissions as the Council's Deptford District Housing Office.

- 3.2 In February 1995 planning permission was granted for the continued use of the building as a neighbourhood office and the construction of a single storey building at the rear to provide additional facilities for the District Housing Office.
- 3.3 The temporary office building in the rear part of the garden area was demolished in April 2000 and details of the garden restoration were approved in June 2000.
- 3.4 In 2002 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. The permission was subject to a number of conditions.

3.5 Condition (5) 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.

3.6 Condition (6) states:

Full details of the treatment to the rear garden shall be submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details prior to the occupation of any of the flats hereby approved.

No details were submitted for approval pursuant to Condition (6).

3.7 In January 2007 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.'* Permission was refused 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).

3.8 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.

3.9 In 1982 an established use certificate was issued for the use of No.84 as four flats. In 2001 a Certificate of Lawfulness was issued in respect of the use of No. 84 as four flats.

4.0 Enforcement History

4.1 In 2008, the Council received a complaint regarding an alleged breach of Condition (5) of the 2002 planning permission - DC/02/51706. The complainant stated that an existing fence enclosing the rear part of the garden area had not been removed and as a result the occupiers of the residential units contained within 86 Wickham Road (along with the flat within the attic of 84-86) were unable to use this garden area.

4.2 A site visit established that an existing fence was in situ separating the rearmost parcel of garden land from the remaining parts of the garden. However, an 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.

4.3 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
- Flat E - sold in September 2006.

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

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

4.5 The use of the parcel of land to the rear of the gardens for Flats A and B was not included in any of the above leases.

4.6 Residents were advised that 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.

4.7 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.

4.8 Following investigation where it was established that despite the fence being in place the area of land in question was accessible, a report was submitted 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 officer's 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. A copy of the 9 December 2010 report is attached as an appendix.

4.9 Although details in respect to Condition (6) have not been submitted for approval, the Committee resolved that it was not expedient to take enforcement action against the breach of Condition (6) as eight years had elapsed since the grant of permission for the conversion of the property to flats and four years had elapsed since the occupation of the development.

5.0 Alleged Breach of Planning Control

5.1 Condition (5) of the 2002 planning permission for the conversion of No. 86 - 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'*.

5.2 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 plots used by Flats A and B, 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.

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 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.

6.2 Lewisham Core Strategy

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.

6.3 Unitary Development Plan (July 2004)

Retained UDP policies that are relevant to the case are:
Policy URB 3: Urban Design
Policy HSG 4: Residential Amenity

7.0 Consideration of Enforcement Action

- 7.1 The main issue for consideration in this case is whether it is possible and appropriate for the Council to serve a Breach of Condition Notice, under Section 187A of 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.
- 7.2 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.
- 7.3 The original planning application file, which included the approved plans as well as the location plan is only partially available to the planning department. During the scanning of files, only the application form and other correspondence appear to have been saved in this case.
- 7.4 Without the approved plans and the location plan it is impossible for officers to be certain in establishing whether or not a breach of Condition (5) has actually occurred. With this in mind, attempting to secure compliance with the Condition by the issue of a Breach of Condition Notice and potentially subsequent prosecution when officers are not certain that in fact there has been a breach of planning control, would be inappropriate.
- 7.5 The wording of Condition (5) is somewhat vague and it raises further questions as to the extent of the land intended to be used as amenity space for the benefit of future occupiers. In particular it is uncertain whether the garden land at the rear of No. 84 was intended to be covered by the condition.
- 7.6 The amenity space to the rear of 86 Wickham Road is currently divided by fencing into three areas, two of which appear to provide private garden areas for occupiers of individual flats. The portion of land to the rearmost part of the site, is untended and overgrown, however, due to the presence of an unlocked gate, the area is not in fact inaccessible to the occupiers of the flats and could be used for their amenity. An original brick boundary wall divides the rear garden areas of Nos. 84 and 86.
- 7.7 The Council has been unable to establish the exact extent of a breach of Condition (5) of the 2002 planning permission - DC/02/51706 and therefore at this present moment in time it is not considered appropriate or reasonable to issue a Breach of Condition Notice or take further enforcement action.
- 7.8 The Council may only issue a Breach of Condition Notice when a breach of a valid planning condition has been established. There is no right of appeal against a Breach of Condition Notice. On prosecution, a statutory defence to prosecution is that the person in control; namely that the "freeholder" is no longer in control of the land or that every effort has been made to comply with the condition.

8.0 Legal Implications

8.1 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.

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.

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.

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.

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 reason:

The Council has been unable to establish that a breach of Condition (5) of planning consent - DC/02/51706 at the above address in fact has occurred and therefore it is inappropriate to issue a Breach of Condition Notice or take further enforcement action.

11.0 RECOMMENDATION

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