

Committee	PLANNING COMMITTEE (C)	Item No. 10
Report Title	84-86 WICKHAM ROAD SE4 1NF	
Ward	Brockley	
Contributors	Richard Lockett	
Class	PART 1	09 DECEMBER 2010

## **REQUEST FOR ENFORCEMENT ACTION**

### **Background Papers**

- (1) Case File
- (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 deals with a breach of planning control at the site 84-86 Wickham Road and whether it would be expedient for the Council to instigate planning enforcement action to rectify the breach.

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

- 2.1 The application site is a three storey building located on the north side of Wickham Road and comprises a pair of semi detached properties containing four two bedroom self contained flats as well as a one bedroom self contained flat in the roof space.
- 2.2 The property falls within the Brockley Conservation Area, but it is not a listed building.

### **3.0 Planning History**

- 3.1 In December 2002, Planning Permission (regd. no. DC/02/51706) was granted 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.
- 3.2 Condition 5 of the planning permission required: 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.

Condition 6 of the planning permission required: 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.

- 3.3 Condition 6 was never discharged as no details were received in this regard.

Condition 5 requires the amenity space be retained permanently for the benefit of the occupiers of the residential units. Currently, the amenity space to the rear is divided up between the two lower floor flats with a parcel of fenced land, with an access gate, to the rear of that land divided up which is currently unused.

- 3.4 The parcel of fenced land to the rear of the garden has been the subject of separate planning applications for the construction of 3 single storey two bedroom mews houses, together with the provision of 6 bicycle spaces and a bin store, which was **refused**. No planning consent has been granted for the development of this parcel of land.

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

- 4.1 Planning consent was granted for the conversion of this property subject to the condition:
- that prior to occupation details of works to the rear space be submitted to the Council for approval and then undertaken, which has not occurred; and
  - that the whole of the amenity space would be retained for the benefit of the occupiers of the residential units.

#### **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.

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

- 5.3 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.

#### **6.0 Planning Considerations**

- 6.1 In 2008 a complaint was received claiming that the whole of the existing amenity space, as shown on the permitted plans, had not been retained permanently for the benefit of the occupiers of the residential units. This complaint was made by one of the residents of the development.

The considerations in this case are whether there has in fact been a breach of planning control and whether in the circumstances of the case the Council considers that it would be expedient to take enforcement action to rectify the breach.

- 6.2 As stated earlier, Condition 5 required the whole of the existing amenity space, as shown on the permitted plans, to be retained permanently for the benefit of the occupiers of the residential units. As explained earlier in the report the amenity space, currently, is divided up between the two lower floor flats with a parcel of fenced land, with an access gate, to the rear of the garden which is unused - as officers understand matters none of the occupiers of the residential units have a legal right to access this land.
- 6.3 The leases in the individual flats, the residential units, have now been sold – with the last being sold in September 2006.
- 6.4 Of the five leases two included the use of outdoor amenity space - those for ground floor Flats A and B. Flats C, D and E were all sold without the allocation of amenity space. None of the leases included the use of the parcel of land to the rear of the garden. Due to the fact that contractual rights of access to the amenity space has not been secured for the benefit of all the occupiers of the residential units the allegation is that the owner is in breach of the condition. Officers consider that enforcement action could not remedy the breach and that to do so would not be expedient. It is now not possible for the owner to remedy the breach as contractual rights govern access to and use of the land to the occupiers of the separate two residential units (Flat A and B) – none of the occupiers of the Flats C, D and E can access the land to the rear without trespassing on the land allocated to Flats A and B. It is now, due to the contractual arrangements, not possible to secure compliance with the condition accordingly officers consider that to take enforcement action to remedy the breach would, in the circumstances, not be expedient.
- 6.5 Condition 6 of the planning permission required that full details of the treatment to the rear garden shall be submitted to and approved in writing by the local planning authority. Following approval of the details works shall be carried out in accordance with the approved details prior to the occupation of any of the flats hereby approved. The non compliance with the condition is a breach planning control. It is for members to consider whether in the circumstances it is expedient to take enforcement action. Of consideration will be that eight years have passed since the grant of permission and the residential units have been sold and been occupied for at least four years. In the circumstances officers do not consider that it is expedient to take enforcement action to remedy the breach of planning control due to the contractual arrangements making it practically impossible for the owner to comply.

## **7.0 Legal Implications**

- 7.1 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.

## **8.0 Conclusion**

- 8.1 It is therefore recommended that no further action be taken on the alleged breach of condition 5 and 6.

## **9.0 RECOMMENDATION**

- 9.1 Authorise officers to take no further action in respect of the failure to adhere to condition 5 and 6 of planning permission ref: DC/02/51706.

## **MINUTES**

The Planning Officer outlined the history of the property and the breach of planning control.

The Committee received verbal representations from Mr S Jahanji objecting to the officers recommendation.

Councillor Paschoud moved a Motion to overturn the officer's recommendation and authorise enforcement action, which was seconded by Councillor Muldoon. Members voted on the Motion as follows:-

FOR: Councillors Padmore (Chair), Clarke, Muldoon and Paschoud.

## **RESOLVED** that

- (i) Officers be authorised to issue a breach of condition notice to secure compliance with Condition (5) of the planning permission issued under reference DC/02/51706 namely: "The whole of the amenity space, as shown on the permitted plans, shall be retained permanently for the benefit of the occupiers of the residential units hereby permitted"; by securing the removal of all fences dividing and subdividing the amenity space, to enable access to the whole of the amenity space.
- (ii) No enforcement action to be taken in relation to Condition (6) of the planning permission issued under reference DC/02/51706.