

Committee	PLANNING COMMITTEE C	
Report Title	5 & 6 BEVERLEY COURT, BREAKSPEARS ROAD, SE4 1UN REQUEST NOT TO PURSUE ENFORCEMENT ACTION	
Ward	Brockley	
Contributors	Gemma Barnes and Phil Ashford	
Class	PART 1	08 November 2012

### Background Papers

Adopted Unitary Development Plan (July 2004)  
Local Development Framework (June 2011)  
The London Plan (July 2011)  
Circular 10/97: Enforcing Planning Control:  
legislative provisions and procedural  
requirements (2006)  
National Planning Policy Framework (March  
2012) Paragraph 207: Enforcement

### Designation

Adopted UDP - Existing Use  
Brockley Conservation Area  
Brockley Article 4 Direction  
PTAL 3/4

## **1.0 Introduction**

- 1.1 This report deals with a breach of planning control at Nos. 5 and 6 Beverley Court, in relation to the unauthorised replacement of windows at both of the properties and whether it is expedient for the Council to instigate formal enforcement action.

## **2.0 Property/Site Description**

- 2.1 Beverley Court is a post war development built on previously undeveloped land used as a nursery until the 1950's. It consists of three terraces of small two storey houses finished in white painted render, enclosing a pleasant planted parking courtyard. It is located behind the area's principal streets and alongside the railway line.
- 2.2 The original windows are a mixture of timber framed side hung casement windows, and fixed casements with top lights pivoting outwards, subdivided by glazing bars into small panes.
- 2.3 Nos. 5 and 6 are located within the first terrace of properties running north to south close to the entrance into Beverley Court although the terrace is not visible from Breakspears Road. The terrace backs onto a row of garages which are accessed via Wickham Road.
- 2.4 Although Beverley Court is a private road and there is a lockable gate at the Wickham Road frontage which restricts vehicular access to residents only it is possible for pedestrians to gain access at this point. A locked gate prevents pedestrians using Beverley Court as a through-route but residents can use the gate to the side of No.7 to gain access to the garages and Wickham Road. There is a sign stating that Beverley Court is a private road on the Breakspears Road frontage but no gate to prevent vehicular or pedestrian access at this point. Consequently as the ability exists for the public to enter Beverley Court from Breakspears Road the

development falls within the definition of a public highway and is therefore covered by the Brockley Article 4 Direction.

### **3.0 Relevant Planning History**

3.1 **DC/10/74744:** The construction of a single storey conservatory to the rear of 5 Beverley Court, Breakspears Road SE4. Granted. The officers report for this application refers to the Article 4 Direction being in place.

3.2 **DC/08/65899:** The installation of timber double glazed replacement windows in the elevations of 1 Beverley Court, Breakspears Road SE4. Granted.

### **4.0 Policy Context**

#### National Planning Policy Framework (March 2012)

4.1 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 and states, in paragraph 211, that 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.

4.2 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.

4.3 With regard to enforcement Paragraph 207 of the NPPF 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."*

4.4 In addition, Circular 10/97: Enforcing Planning Control: legislative provisions and procedural requirements (2006) is relevant.

#### London Plan (July 2011)

4.5 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 this applications are:

Policy 7.1 Building London's neighbourhoods and communities

Policy 7.4 Local character

Policy 7.6 Architecture

Policy 7.8 Heritage assets and archaeology

#### 4.6 Adopted UDP (July 2004)

URB 3 Urban Design

URB 6 Extensions and Alterations

HSG 4 Residential Amenity

URB 16 New Development, Changes of Use and Alterations to Buildings in Conservation Areas

#### 4.7 Core Strategy

The Core Strategy was adopted on 29<sup>th</sup> June 2011.

The following lists the relevant strategic objectives, spatial policies and cross cutting policies from the Lewisham Core Strategy as they relate to this application:

Objective 1: Physical and socio-economic benefits

Objective 10: Protect and enhance Lewisham's character

Spatial Policy 1: Lewisham Spatial Policy

Spatial Policy 5: Areas of Stability and Managed Change

Policy 15: High quality design for Lewisham

Policy 16: Conservation areas, heritage assets and the historic environment

Residential Standards Supplementary Planning Document (2006).

Brockley Conservation Area Character Appraisal (2005).

Brockley Conservation Area Supplementary Planning Document (2005).

### **5.0 Consideration of Enforcement Action**

- 5.1 The main issue for consideration is whether it is appropriate and expedient for the Council to serve an Enforcement Notice, under 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.

#### Breach

- 5.2 A complaint was received in March 2011 alleging replacement UPVc windows had been installed at No.5 Beverley Court.
- 5.3 The Council undertook a site inspection where it was established that all of the original windows within the front and rear elevations and the front door had been replaced at No. 5 Beverley Court and the ground floor windows in the front and rear elevations had been replaced at No.6. The replacements were UPVc.

- 5.4 The Council wrote to the Occupiers of the Nos. 5 and 6 inviting a retrospective planning application for retention of the windows but advising that due the properties being sited within a Conservation Area an application for retention of UPVc windows would be unlikely to be approved (letter sent November 2011).
- 5.5 Upon receipt of the Council's letter the Occupier of No.5 contacted the Council to advise that she had previously sought advice from the Councils Conservation Team as to whether planning permission would be required for replacement of the windows. The reason clarification was sought was because the windows would only be visible from a private road so it was unclear whether the Article 4 Direction would apply.
- 5.6 A Conservation Officer responded to this query (February 2011) advising that planning permission would not be required on the grounds of the Article 4 Direction not covering private roads. The occupier of the property relied on this advice and proceeded to replace fenestration in the front and rear elevations of the property.
- 5.7 The occupier of No.6 also sought advice from the Councils Conservation Team as to whether planning permission would be required for replacement windows and front door on the grounds that she had seen the advice given to No.5. Again confirmation from the same officer was provided that planning permission would not be required.
- 5.8 Upon further investigation it became clear that the advice given by the Conservation Officer to both of the above enquires was incorrect. A further letter was sent to both Nos. 5 and 6 Beverley Court (March 2012) stating that incorrect advice had previously been given in respect of whether Beverley Court as a private Road is covered by the Article 4 Direction. The letter clarified the position as follows:  
*"Private roads are not excluded from the definition of a highway in planning legislation. A footpath or road is considered to be a highway even if not publically maintained, where members of the public are able to pass and re-pass (ie: able to access the footpath or road). Beverley Court although not publically maintained, is accessible to members of the public on foot and by car and therefore does fall within the definition of a highway for the purposes of planning. As such Beverley Court is covered by the Article 4 Direction"*.
- 5.9 The letter confirmed that the previous advice given by the Conservation Officer was incorrect and that informal advice does not constitute a Lawful Development Certificate and would not override the need for a planning application to be submitted. A further request was made for an application to be submitted to enable a full assessment of the impact of the development to be undertaken but it was reiterated that the Council do not normally grant planning permission for UPVc windows in conservation areas.
- 5.10 In April 2012 the Council wrote to occupiers of all of the properties in Beverley Court to confirm that the properties are covered by the Brockley Article 4 Direction.
- 5.11 Between April and June 2012 the Council engaged in various correspondence with the Occupiers of Nos. 5 and 6 in respect of this matter including correspondence submitted via a legal representative and Joan Ruddock MP.

- 5.12 Although retrospective applications were not submitted the Council's Conservation Team undertook further analysis of the impact of the unauthorised windows in order to establish what action, if any, should be taken to remedy the breach of planning control. As a result of this assessment it was concluded that the harm of the UPVc windows in this location is not that significant to justify enforcement action. The occupiers of Nos. 5 and 6 were notified by way of a response to a corporate complaint on 21 June 2012, that it was the view of officers that further enforcement action would not be taken and that a report would be presented to the Planning Committee for their consideration and agreement.
- 5.13 To date no retrospective application has been submitted to regularise the breach of planning control at Nos. 5 or 6 Beverley Court.
- 5.14 Whilst a breach of planning control has taken place for the reasons set out in this report it is the officers recommendation that no further action be taken. It is important to note that the properties are covered by an Article 4 Direction and the Council is not necessarily estopped from taking enforcement action where informal advice has been given by an officer if the level of harm caused by the breach of planning control warrants enforcement action being taken.

## **6.0 Planning Considerations**

- 6.1 The main planning considerations are :
- Visual impact of operational development including the impact on the Brockley Conservation Area;
  - Impact on neighbouring amenity.

### Visual impact

- 6.2 National and local planning policies place considerable emphasis on the importance of achieving high quality design that complements existing development, established townscape and character. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. New development must conserve the significance of heritage assets and their setting. When critiquing design, local planning authorities must take a proportionate approach to the type of development proposed and its context.
- 6.3 An important consideration when determining the acceptability of replacement windows in a conservation area is the visual impact on the property and how this will affect the character and appearance of the conservation area.
- 6.4 The character of the conservation area is set out in the Brockley Conservation Area Character Appraisal, and guidance on development is provided in the associated Supplementary Planning Document, both adopted in December 2005.
- 6.5 In summary the appraisal explains that the conservation area was built up by a number of speculative developers between the 1830's and early 1900s, with the majority of the area constructed in the 1870s and 1880s. The houses were built in a variety of architectural styles popular in the mid to late Victorian period and display good quality Italianate stucco and Gothic terracotta detailing.

- 6.6 The character of the area is that of a large Victorian suburb for the middle classes. Houses tend to be large and set in wide tree-lined roads with extensive front and rear gardens, some with mews to the rear, adding to the area's spacious and leafy appearance. Houses were constructed in a variety of forms, notably in short terraces, in semi-detached pairs and to a lesser extent free standing villas.
- 6.7 In contrast Beverley Court is a post war development built on previously undeveloped land used as a nursery until the 1950's. It consists of three terraces of small two storey houses finished in white painted render, enclosing a pleasant planted parking courtyard. It is located behind the area's principal streets and alongside the railway line.
- 6.8 While it continues the principle of suburban development it is quite distinct in scale, layout and design from the principal character of the conservation area and the properties are not visible from the streets which generate the area's character. Although of pleasant character its contribution to the heritage significance of the conservation area is considered to be a modest one.
- 6.9 The Article 4 Direction came into effect in January 2006 and followed on from the work on the conservation area appraisal. Part of the research underpinning the appraisal involved a survey of alterations to the Victorian properties (not including Beverley Court) in the conservation area which demonstrated that the extent of unsympathetic alterations taking place was beginning to erode the character of the conservation area, hence justifying the removal of the householders permitted development rights to make alterations visible from a highway without planning permission.
- 6.10 The associated SPD states at page 4 under windows "*Upvc will not be permitted .....[because] ....very much at odds with the character of historic buildings*", a category Beverley Court does not fall into.
- 6.11 In conclusion the UPVc windows installed are not considered to harm the heritage significance of the conservation area, because of both Beverley Court's isolated location away from the historically significant streets of the conservation area and the modest contribution that it makes to character. In terms of the character of Beverley Court itself the use of alternative window materials are not considered inappropriate subject to the proportions and glazing patterns reflecting those of the original windows, which in the case of Nos. 5 and 6 they do.
- 6.12 Taking account of the above it is considered that if a planning application were to be submitted for retention of the UPVc windows it is likely to be approved.
- 6.13 It is important to note that the Article 4 Direction is considered to be important for Beverley Court as the properties do make a modest contribution to the special interest of the Brockley Conservation Area. This small infill development has its own merits which should be afforded protection through the Article 4 Direction. In respect of windows, due to the lack of visibility it is considered that the change of materials for the windows would not be harmful to the character and appearance of Beverley Court nor the wider Conservation Area but this is in the context of maintaining coherence and consistency in the form and detailing of Beverley Court, which is its greatest strength.

- 6.14 When granting planning permission for windows the Council would wish to retain a degree of control that would ensure that any new windows retain the original glazing pattern and a consistent opening pattern. The same applies for changes of doors, roof covering, type and height of front boundaries, the insertion of rooflights, addition of dormers and changes to the exterior finish (the facades of Beverley Court are traditionally painted). Consequently the Article 4 Direction remains relevant, justified and of value for maintaining Beverley Court's own integrity. The decision to take no further action in this instance would not prejudice future control over alterations to dwellings in Beverley Court. Neither would it prejudice the determination for applications for UPVc windows if the detailed form and design of the window was not deemed to be acceptable.

#### Impact on neighbours

- 6.15 Policy HSG 4 of the UDP seeks to protect existing residential occupiers from inappropriate development. Issues to consider are the impact of a development proposal upon neighbouring properties by way of overshadowing, loss of light, overbearing impact, overlooking, loss of privacy and general noise and disturbance. It is not considered that the proposal would adversely affect neighbouring amenity in this respect.
- 6.16 However, officers are aware that the Article 4 Direction has prevented other residents in Beverley Court from inserting replacement UPVc windows, some occupiers have chosen to replace their windows with timber whilst others have installed secondary glazing. Such measures may have resulted in additional expense for those occupiers which is regrettable. However, this in itself is not sufficient reason to pursue enforcement action in this instance, when a thorough and recent assessment of the impact of UPVc windows in this location has revealed that, in principle UPVc windows would be acceptable provided they are of suitable design. Planning records show that no applications have been submitted for UPVc windows in Beverley Court and therefore until this time no formal determination of the appropriateness of UPVc windows in this location has been issued.

#### Summary

- 6.17 Overall for the reasons stated the windows in situ at Nos. 5 and 6 Beverley Court are not considered to result in harm to the character and appearance of the host buildings or the Brockley Conservation Area. Consequently it is not expedient to take any further action.

### **7.0 Legal Implications**

- 7.1 Government Policy advice to local planning authorities on the use of their enforcement powers is set out in The National Planning Policy Framework (March 2012). Local planning authorities have been given primary responsibility for taking whatever enforcement action may be necessary in the public interest.
- 7.2 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.
- 7.3 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.

- 7.4 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.
- 7.5 For the reasons stated it is not considered appropriate or necessary in this case to take further enforcement action.

## **8.0 Human Rights Implications**

- 8.1 Implications in relation to the Human Rights Act 1998 (HRA) have been identified in regards to the alleged breach. 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

- 8.2 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.
- 8.3 In relation to Article 8 in particular consideration has been given to the personal circumstances of the occupiers of the residential premises as well as occupiers of neighbouring dwellings. Clearly the decision to take no further action will not impact upon the human rights of the occupiers of Nos. 5 and 6 Beverley Court.

8.4 Despite the fact that other residents in Beverley Court have taken an alternative approach to window replacements because of the Article 4 Direction this is itself is not a reason to pursue enforcement action where there is insufficient harm being caused. The decision to take no further action in this instance will not impact upon the human rights of other residents in Beverley Court.

## **9.0 Equalities Implications**

9.1 The Council has considered the public sector equality duty under section 149 of the Equalities Act 2010 and in the exercise of its functions to have due regard to the need to eliminate discrimination, harassment and victimisation and any other conduct which is prohibited under this Act and to foster good relations between persons who share a relevant protected characteristic and those who do not share it. The new duty covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race religion or belief, sex and sexual orientation.

9.2 As with the case with the original separate duties, the new duty continues to be a “have regard duty” and the weight to attach to it is a matter for the committee bearing in mind relevance and proportionality. It is not an absolute requirement to eliminate discrimination, advance equality of opportunity, advance equality of opportunity or foster good relations.

9.3 It is considered that in this matter there is no known impact on equality by recommending that no further action be taken.

## **10.0 Conclusion**

10.1 The breach of planning control at Nos. 5 and 6 Beverley Court does not result in harm to the character and appearance of the host building or the conservation area. Furthermore the windows do not cause harm to neighbouring amenity and it is not therefore in the public interest to pursue further enforcement action.

## **11.0 RECOMMENDATION**

11.1 AUTHORISE THE HEAD OF LAW to take no further action in respect of the unauthorised windows and doors at Nos. 5 and 6 Beverley Court.

## **MINUTES**

5 & 6 BEVERLEY COURT, BREAKSPEARS ROAD, SE4

The planning officer outlined the details of the breach of planning control regarding the unauthorised replacement of the windows and doors and recommended that no formal enforcement action be taken.

After deliberation, Councillor Bell moved a motion to accept the officer's recommendation not to take formal enforcement action, which was seconded by Councillor Gibson

Members voted as follows:

FOR: Councillors Bell (Chair), Paschoud, Fitzsimmons, Gibson and Hall.

RESOLVED: That the Head of Law take no further action in respect of the unauthorised windows and doors at Nos. 5 and 6 Beverley Court.