

Committee	PLANNING COMMITTEE (C)	
Report Title	26 LOAMPIT HILL SE13 7SW	
Ward	Ladywell	
Contributors	Richard Lockett	
Class	Part 1	Date: 1 MARCH 2012

## **REQUEST FOR ENFORCEMENT ACTION**

### **Background Papers**

- (1) Case File LE/1113/26/TP
- (2) Adopted Unitary Development Plan (July 2004)
- (3) Adopted Core Strategy (June 2011)
- (4) The London Plan (July 2011)
- (5) PPG 18: Enforcing Planning Control

### **Zoning**

Adopted UDP - Existing Use

## **1.0 Introduction**

- 1.1 This report deals with a breach of planning control at 26 Loampit Hill SE13 regarding the construction of a timber framed conservatory at second floor level to the rear of the building 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 site is a three storey mid terrace property on the northern side of Loampit Hill, close to the junction with Elswick Road. At ground floor level the premises is set forward from the main front elevation of the building and is used as a retail shop with the floors above being used for residential purposes.
- 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 1991, Planning consent was granted for the change of use of 26 Loampit Hill SE13 to an insurance brokers office.
- 3.2 In April 2011, planning consent was refused under delegated powers for the retention of a conservatory at second floor level to the rear of 26 Loampit Hill for the following reason:
  - (1) The conservatory is considered to be out of keeping with its surroundings due to its elevated position and design. It is over bearing and out of keeping with neighbouring properties which results in loss of amenity by reason of overlooking and visual intrusion, contrary to Policies URB 6 Alterations and Extensions, HSG 4 Residential Amenity and HSG 12 Residential Extensions in the adopted Unitary Development Plan (July 2004). Application Ref. DC/10/75988).
- 3.3 An appeal was made to the Planning Inspectorate regarding the Council's decision to refuse this application and on 10 January 2012 the Planning Inspectorate dismissed the appeal.

#### **4.0 Planning Enforcement History**

- 4.1 In August 2010 the Council received complaints regarding the construction of a timber framed conservatory at second floor level to the rear of 26 Loampit Hill. Following an investigation, an application was made for its retention, which was subsequently refused. The following appeal was dismissed by the inspector and the conservatory still remains in situ.

#### **5.0 Breach of Planning Control**

- 5.1 Without the benefit of planning consent, the construction of a timber framed conservatory at second floor level to the rear of 26 Loampit Hill. The extension is to an existing flat and is used incidental to this unit, for storage and additional amenity space.

#### **6.0 Policy Context**

##### **6.1 National Policy**

PPG 18: Enforcing Planning Control provides guidance to local authorities on the use of enforcement powers.

##### **Planning Policy Statement 1: Delivering Sustainable Development**

- 6.2 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.'

##### **Lewisham Core Strategy**

- 6.3 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)**

- 6.4 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 regard to this second floor rear conservatory. Having considered the relevant Council Policies, Planning

permission was refused for the retention of the structure, which had been built without the necessary planning permission, a decision subsequently upheld by the Planning Inspectorate.

- 7.2 The main planning considerations in this case are the impact of the structure on the character and appearance of the existing building, the street scene and any impact upon the amenities of neighbouring occupiers.
- 7.3 In terms of the design of the conservatory, it is considered to be totally out of keeping with the surrounding area. This part of Loampit Hill forms part of a local shopping parade and to the rear there is little or no garden space for the residential properties above. A conservatory is considered to be an acceptable addition to a residential property, within a garden setting, however, at an elevated level the structure appears obtrusive and out of keeping. Such structures are not a traditional feature to upper floors and the eye is drawn to it.
- 7.4 The height of the structure means that it dominates the views along the rear of the terrace, and it is made even more incongruous due to the choice of materials. The surrounding buildings are constructed from traditional brickwork, so the addition of a timber framed conservatory, with polycarbonate panels appears particularly out of character.
- 7.5 The use of the flat roof raises issues with regards to the privacy of neighbouring occupiers, as the conservatory is at a level with the first floor flats next door. Unlike in the case of a ground level conservatory, there is no boundary fencing to protect the amenities of neighbouring properties, in terms of overlooking. The conservatory also features a side door which gives access onto the flat roof area outside of 28B. Although the issue of access is not a planning concern in this case, it is considered that this area may, as a result, become an outdoor amenity space, which in turn is likely to lead to a demand for safety balustrading, which is also likely to be of intrusive appearance.
- 7.6 An objection was received from the resident of 28A Loampit Hill who stated that as well as the design and siting of the structure being out of keeping with the surroundings, there is also a privacy issue regarding the bedroom at 28B, which is directly visible from the conservatory. Issues have also been raised with regard to the access to the flat roof next door as well as concerns over fire safety. These issues were largely dealt with in the delegated report, however these objections were considered to be legitimate concerns, shared by the Council. The conservatory is inappropriate on this site and its design and siting are considered unacceptable.
- 7.7 Despite having translucent panels, the structure is highly visible. The conservatory is of generous proportions and is situated at second floor level and is therefore particularly visually obtrusive and overbearing.
- 7.8 There are a range of varying extensions and buildings to the rear of this parade, however, a conservatory is generally constructed to the rear of a dwellinghouse, within a garden environment. The fact that this conservatory is at 2<sup>nd</sup> floor level makes it particularly obtrusive. In considering the appeal, the Planning Inspector opined that "the structure would be a large and visually dominant addition, particularly when viewed from Elswick Road, which gives a clear view of the rear of the terrace. There are no other structures of this type in the area, and the

introduction of the proposed development would introduce a large and ungainly element into the street scene.”

- 7.9 The conservatory is considered to be out of character with the existing building and its surroundings, to the extent that it actually draws the eye and therefore could not be considered subordinate.
- 7.10 The conservatory has a negative impact in terms of overlooking, particularly at 28B, where a bedroom is overlooked. There is also the potential for further use of neighbouring flat roof areas as amenity space. The Inspector also considered that the conservatory results in a loss of privacy affecting windows at the rear of the adjoining properties at 24 and 28 Loampit Hill. In addition overlooking of nearby residential gardens in Elswick Road would be increased. The Inspector also noted that while the appellant had indicated that he would be prepared to build the side walls of the structure in obscured glazing to reduce the loss of privacy to adjoining properties, this would be likely to increase the visual intrusion of the development when viewed from those properties.
- 7.11 For these reasons, it is considered appropriate to take enforcement action to secure removal of the unauthorised timber conservatory.

## **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 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 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 The unauthorised conservatory is unacceptable as it is considered harmful to the character and appearance of the street scene and the host building. Accordingly, it is considered expedient to serve an Enforcement Notice to remedy this breach of planning control.

11.2 The conservatory is considered to be out of keeping with its surroundings due to its elevated position and design. It is overbearing and out of keeping with neighbouring properties which results in loss of amenity by reason of overlooking and visual intrusion, 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) and Policy 15 High quality design for Lewisham of the adopted Core Strategy (June 2011).

## **12.0 Requirements of Enforcement Notice**

12.1 To secure the removal of the timber framed conservatory at second floor level 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 at second floor level to the rear of 26 Loampit Hill for the following reason:-

The conservatory is considered to be out of keeping with its surroundings due to its elevated position and design. It is overbearing and out of keeping with neighbouring properties and has resulted in loss of amenity by reason of overlooking and visual intrusion, 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) and Policy 15 High quality design for Lewisham of the adopted Core Strategy (June 2011).

Period of Compliance:

Three months.